

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, D.C. 20350

SECNAVINST 1920.6A
OP-13863 Pers-212C
21 November 1983

SECNAV INSTRUCTION 1920.6A

From: Secretary of the Navy
To: All Ships and Stations

Subj: Administrative Separation of Officers

Ref: (a) Title 10, United States Code (NOTAL)
(b) DoD Directive 1332.30 of 15 Oct 1981 (NOTAL)
(c) SECNAVINST 1850.4A (NOTAL)
(d) DoD Directive 1336.1 of 14 Dec 1978 (NOTAL)
(e) DoD MAN 5000.12-M of June 1981 (NOTAL)
(f) SECNAVINST 5300.28
(g) SECNAVINST 5510.30
(h) SECNAVINST 1900.10
(i) Defense Officer Personnel Management Act (DOPMA), Pub. L. No. 96-513, 94 Stat. 2835 (1980)
(j) SECNAVINST 1821.1 (NOTAL)
(k) SECNAVINST 1412.8 (NOTAL)
(l) SECNAVINST 1412.9 (NOTAL)
(m) SECNAVINST 1420.1
(n) SECNAVINST 1421.7A (NOTAL)
(o) DoD Directive 1304.19 of 9 Jan 1980

Encl: (1) Definitions
(2) Policy Governing Voluntary Separation
(3) Policy Governing Involuntary Separation
(4) Guidelines on Separations For Cause
(5) Guidelines on Characterization of Service
(6) Guidelines on Recommendations - Grade at Retirement
(7) Notification Procedure
(8) Administrative Board Procedures

1. **Purpose.** To establish policies, standards, and procedures for the administrative separation of Navy and Marine Corps officers from the naval service in accordance with references (a) and (b).

2. **Cancellation.** SECNAV Instructions 1900.9D, 1920.3K, and 1920.6. The provisions of all regulations and memoranda providing guidance on separations, characterizations of service, and delegations of authority inconsistent herewith and within the scope of this instruction are held in abeyance pending their modification or cancellation.

3. **Effective Date**

a. This instruction is effective 90 days after signature and shall control all administrative separation proceedings initiated on or after that date. Proceedings are considered to be initiated on the date a command receives a written request for separation from an officer, or on the date a command delivers to an officer a notice of intent to start separation proceedings.

b. Separation proceedings initiated prior to the effective date of this instruction will be continued pursuant to policy and instructions in effect prior to that date.

4. **Applicability**

a. Under the authority of references (a) and (b), this instruction provides for the revocation of commissions, discharge, termination of appointments, release from active duty, retirement for length of service, and dropping from the rolls of Navy and Marine Corps officers. The policies, reasons for separation, and provisions for characterization of service set forth in this instruction apply to all officers and warrant officers of the Regular and Reserve components of the Navy and Marine Corps.

b. This instruction does not apply to discharge or dismissal by reason of court-martial sentence under reference (a), or discharge or retirement for physical disability under reference (c).

5. **Definition.** Definitions and rules of interpretation used in this instruction are provided in enclosure (1).

6. **Background.** Once an individual has legally accepted a commission or warrant as a Regular or Reserve officer in the Navy or Marine Corps and has executed the oath of office, he or she has acquired a legal status which continues until it is terminated through a specific, legally authorized process. Neither retirement nor release from active duty affects an individual's status as a commissioned or warrant officer until the officer's commission or warrant has been terminated.

7. **Policy.** It is Department of the Navy policy to promote the readiness of the naval service by maintaining authorized strength levels in each grade and competitive category and by maintaining the highest standards of conduct and performance in the officer corps. To meet these objectives it is necessary to provide for orderly and expeditious administrative separation of officer personnel.



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SECNAVINST 1920.6A

21 November 1983

a. The administrative separation policies and procedures in this instruction will support accession, promotion, redesignation, retirement and resignation policies to:

(1) maintain authorized strength in each competitive category and grade;

(2) ensure planned promotion flow and reasonable career opportunities in each competitive category;

(3) attain and maintain an all Regular active-duty career force in each competitive category, supplemented when necessary with Reserve officers to meet current authorized strength and special skill requirements; and,

(4) sustain the traditional concepts of honorable military service and of special trust and confidence vested in commissioned officers.

b. Officers being processed for separation for cause shall be processed expeditiously. Such officers should receive sufficient supervision to preclude adverse effects on the good order and discipline in their unit. Further, when local processing has been completed and separation has been recommended, the officer concerned shall be physically separated from the command whenever possible by means of leave, temporary reassignment, or other methods while processing is being completed.

c. Standards and procedures established in execution of these policies are intended to achieve consistency of application in a naval leadership system based on command responsibility, accountability and discretion. The standards and procedures are set forth in enclosures (2) through (8), under guidance from references (a) through (n).

8. Completion of Statutory Service Obligation. Officers will normally be retained in a commissioned status in order to fulfill the statutory service obligation referred to in section 651 of reference (a) and subparagraph 4a of enclosure (2). Exceptions to this general rule are as follows:

a. An officer who is discharged from a Regular component for cause for any reason other than substandard performance of duty shall not be tendered a Reserve commission and therefore shall not be transferred to the Ready Reserve to fulfill his or her statutory service obligation.

b. A Reserve officer on active duty or in an active status not on active duty who would otherwise be dis-

charged for cause for any reason other than substandard performance of duty will not be transferred to or retained in the Ready Reserve to fulfill his or her statutory service obligation.

c. An officer will not be transferred to or retained in the Ready Reserve when there are medical reasons why he or she would not be available to meet mobilization requirements.

9. Separation Pay. SECNAV Instruction 1900.7E governs entitlement to separation pay for officers who are administratively separated under the provisions of this instruction.

10. Processing Time Goals. To support the policy objectives and further the efficient administration of officer separations, every effort shall be made to adhere to the following time goals for processing separations. Failure to process an administrative separation within the prescribed time goals shall not create a bar to separation or characterization. Separation processing should be completed:

a. By the date of fulfillment of service obligation for separations upon fulfillment of service obligation.

b. Thirty days from the date a command notifies an officer of the commencement of separation proceedings in cases where no Board of Inquiry or Board of Review is required.

c. Ninety days from the date a command notifies an officer of the commencement of separation proceedings in cases where only a Board of Inquiry is required.

11. Establishing Additional Reasons for Separation. Should the need arise to separate officers for a reason not established in enclosures (2) or (3) of this instruction, the Chief of Naval Operations or the Commandant of the Marine Corps may propose to the Secretary of the Navy, the establishment of a new reason for separation to be included in this instruction. Submission for such additional reasons shall contain the basis for separation, recommended characterization of service or description for the separation, and the procedure for the separation. Separation under any proposed reason will not be executed until the proposal has been approved.

12. Provision of information during separation processing. During separation processing the purpose and authority of

the Discharge Review Board and the Board for Correction of Naval Records shall be explained in a fact sheet. It shall include an explanation that a discharge under Other Than Honorable conditions, resulting from a period of continuous unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration notwithstanding any action by a Discharge Review Board. These requirements are a command responsibility and not a procedural entitlement. Failure on the part of the member to receive or to understand the explanation required by this paragraph does not create a bar to separation or characterization.

13. Responsibilities

a. The Chief of Naval Operations and the Commandant of the Marine Corps are responsible for implementing the policies, standards, procedures, and goals established in this instruction in a manner that ensures consistency in separation policy including revision or cancellation of conflicting guidance.

b. The Chief of Naval Operations and the Commandant of the Marine Corps shall ensure that only the specific reasons for separations provided in this instruction are used in classifying officer administrative separations. They shall also ensure that these specific reasons appear on the appropriate copies of the officer's DD 214/5, Certificate of Release or Discharge from Active Duty under reference (d) and are reported using the separation codes of reference (e). In all cases involving drug offenses the applicable drug offense shall be shown.

R) c. The Chief of Naval Personnel and the Deputy Chief of Staff for Manpower and Reserve Affairs are designated as the Show Cause Authority for the Navy and the Marine Corps respectively, and are delegated the authority to review records to determine whether an officer should be required to show cause for retention in the naval service and to convene Boards of Inquiry and Boards of Review as provided in enclosure (8). The Commandant of the Marine

Corps may further redelegate this authority to the Director, Personnel Management Division.

14. Revisions. Revisions are annotated by marginal notations. Additionally, enclosure (8) includes an enlarged section on membership responsibilities, and actions of Board of Inquiry and Boards of Review.

15. Report. The reporting requirements contained in this instruction are exempt from reports control by SECNAVINST 5214. 2B.

F. B. KELSO, II
Acting

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21 NOV 1983

DEFINITIONS

1. Active commissioned service. Service on active duty as a commissioned officer or commissioned warrant officer.
2. Active duty. Full-time duty in the active military service of the United States.
3. Active duty for Training. Active duty for Reserve training with automatic reversion to inactive duty upon completion.
4. Active-duty List. Separate lists of Navy and Marine Corps officers, required to be maintained by the Secretary of the Navy under section 620 of reference (a) of all officers on active duty in the Navy and the Marine Corps, other than officers described in section 641 of reference (a).
5. Active service. Service on active duty.
6. Active status. A Reserve commissioned or warrant officer, who is a member of the Ready Reserve or Standby Reserve-Active, including Reserve offices on the active-duty list.
7. Bisexual. A person, regardless of sex, who engages in, desires to engage in, or intends to engage in both homosexual and heterosexual acts.
8. Board of Inquiry. A board convened to receive evidence and make findings and recommendations as to separation for cause and characterization of service under this instruction in the case of an officer.
09. Board of Review. A board convened pursuant to section 1183 of reference (a) to review the case of a Regular commissioned officer, other than a warrant or retired officer, who has failed to establish before a Board of Inquiry that he/she should be retained on active duty.
10. Characterization of service. Classification of the quality of service rendered.

Enclosure (1)

21 NOV 1983

11. Commissioned officer. Officers and warrant officers who hold a grade and office above warrant officer, W-1.
12. Commissioned service. All periods of service as a commissioned officer or a commissioned warrant officer in the Army, Navy, Air Force, or Marine Corps, while on active duty or in an active, inactive, or retired status.
13. Convening authority. The Secretary of the Navy or his delegates authorized to appoint boards under this instruction.
14. Continuous service. Military service, unbroken by any period in excess of 24 hours.
15. Counsel. A lawyer certified in accordance with Article 27(b)(1) of the Uniform Code of Military Justice or a nonlawyer, assigned to a respondent for separation processing or a civilian lawyer retained at the officer's expense.
16. Discharge. The termination of an officer's obligation to render service and complete severance from all military status.
17. Dismissal. Separation of a commissioned officer, effected by sentence of a general court-martial, or in commutation of such a sentence, or, in time of war, by order of the President, or separation of a warrant officer, W-1, who is dismissed by order of the President in time of war. A complete severance from all military status.
18. Drop from the rolls. A complete severance of military status pursuant to specific statutory authority, without characterization of service.
19. Homosexual. A person, regardless of sex, who engages in, desires to engage in, or intends to engage in homosexual acts.
20. Homosexual act. Bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires.
21. Legal advisor. A lawyer certified in accordance with Article 27(b)(1) of the Uniform Code of Military Justice, appointed to assist boards convened to consider the separation or discharge of officers.

21 NOV 1983

22. Nonprobationary officers. Regular commissioned officers (other than commissioned warrant officers or retired officers) with five or more years of active commissioned service, and Regular commissioned officers (other than commissioned warrant officers or retired officers) who were on active duty on 14 September 1981 and who have completed more than three years continuous service since their dates of appointment as Regular officers.

23. Obligated Service. All service prescribed in the officer program through which an officer was accessed which was incurred by the officer in consideration of being tendered an initial appointment, or any additional obligation incurred.

24. Officer. A member of the naval service serving in a commissioned or warrant officer grade, either temporary or permanent. The term "officer" does not include any midshipman at the Naval Academy; midshipman, U.S. Navy; midshipman, U.S. Naval Reserve; aviation cadet; or other person in an officer candidate status similar to any one or more of the foregoing.

25. Probationary officers. Regular commissioned officers (other than commissioned warrant officers or retired officers) with less than five years active commissioned service, and Regular commissioned officers (other than commissioned warrant officers or retired officers) who were on active duty on 14 September 1981 and who have completed less than three years continuous service since their dates of appointment as Regular officers.

26. Qualified resignation. A resignation for which the least favorable characterization of service allowed is General.

27. Release from active duty. The transfer of a Reserve officer from active duty to inactive duty.

28. Resignation. The request, by an officer, to be divested of his or her commission or warrant. May be classified as Unqualified, Qualified, or for the Good of the Service as defined in this enclosure. Upon acceptance by the Secretary and completion of all administrative procedures, it represents a complete severance from all military status.

29. Resignation for the Good of the Service. A resignation for which the least favorable characterization of service allowed is Other Than Honorable.

21 NOV 1983

30. Respondent. An officer who is being afforded the opportunity to show cause why a change of status should not be effected in his or her case.

31. Retention on active duty. The continuation of an individual in his or her active-duty status as a commissioned or warrant officer of the Regular Navy or Marine Corps or the Naval or Marine Corps Reserve.

32. Revocation of appointment/revocation of commission/termination of appointment. A complete termination of the military-service status of an officer.

33. The Secretary. The Secretary of the Navy.

34. Separation. A general term which includes discharge, dismissal, dropping from the rolls, revocation of an appointment or commission, termination of an appointment, or release from active duty.

35. Sexual Perversion. Includes:

- (1) Lewd and lascivious acts.
- (2) Sodomy.
- (3) Indecent exposure.
- (4) Indecent act(s) with, or indecent assault on, a person below the age of 16.
- (5) Transvestism or other abnormal sexual behavior.
- (6) Other indecent act(s) or offense(s).

36. Unlawful drug involvement. Includes:

- (1) Drug abuse - the illegal or wrongful use or possession of controlled substances.
- (2) Drug trafficking - the distribution or possession with intent to sell or transfer, controlled substances.

SECNAVINST 1920.6A
21 NOV 1983

(3) Drug paraphernalia - the possession or distribution of drug paraphernalia as set forth in reference (f). The term "controlled substance" means a drug or other substance included in Schedules I, II, III, IV, or V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236) (NOTAL) as updated and republished under the provisions of that Act.

37. Unqualified resignation. A resignation for which the only characterization of service allowed is Honorable.

17 MAR 1993

POLICY GOVERNING VOLUNTARY SEPARATIONS1. Resignation

a. General. Officers serve at the pleasure of the President, and no terminal dates are established for their commissions. The Secretary of the Navy, by virtue of his authority to act for the President, may establish such criteria for the voluntary resignation of an officer's commission as deemed necessary for the maintenance of a sound officer corps.

b. Submission of Requests. The Chief of Naval Personnel (CHNAVPERS) and the Deputy Chief of Staff for Manpower and Reserve Affairs (DC/S (M&RA)) shall establish procedures for the submission of individual resignation requests.

c. Processing resignation requests. CHNAVPERS and DC/S (M&RA) may, on behalf of the Secretary, accept voluntary resignations for reasons authorized in paragraph 5 of this enclosure following the guidelines in subparagraphs (1) through (3).

(1) CHNAVPERS and DC/S (M&RA) may deny, for the Secretary, requests that do not satisfy the criteria set forth in paragraphs 4 and 5 of this enclosure. In addition, requests for voluntary resignation for reasons specified in paragraph 5 of this enclosure will normally be denied when the officer:

(a) Does not comply with the procedures established by CHNAVPERS and DC/S (M&RA) for the submission of individual resignation requests.

(b) Has not completed all service prescribed in the officer program through which accessed and which was incurred by the officer in consideration for being tendered an initial appointment.

(c) Is serving in a competitive category, designator, occupational field, military occupational specialty, or other authorized officer classification which CHNAVPERS or DC/S (M&RA) determines that, due to significant personnel shortages, compelling military necessity requires retention.

(d) Has not completed obligated service incurred for funded education programs including Naval Academy, Naval Reserve Officer Training Corps, Armed Forces Health Professions Scholarships, Uniformed Services University of the Health Sciences, and equivalent funded education programs.

Enclosure (2)

; 7 MAR 1993

(e) Has not completed obligated service incurred for advanced education or technical training requiring additional obligated service, including postgraduate education, service school or college, law school, medical residency, flight training, naval flight officer training, and equivalent programs.

(f) Has been officially notified of orders, or has executed orders and has not served the required period of time at the new duty station, as prescribed by CHNAVPERS or DC/S (M&RA).

(g) Has not completed obligated service incurred as a result of:

1. Transfer into the Regular Navy or Marine Corps,

2. Lateral transfer between competitive categories or designators,

3. Entering a program, or

4. Receiving an incentive pay, continuation pay, or bonus.

(2) A resignation has no effect until accepted by the Secretary, or by CHNAVPERS or DC/S (M&RA) when acting on behalf of the Secretary.

(3) Guidelines for officers being considered for separation for cause under enclosure (3) are contained in paragraph 11 of enclosure (4).

d. Characterization of Service. Generally officers whose resignations are accepted by the Secretary of the Navy for any reason set forth in paragraph 5 of this enclosure shall be honorably discharged from the component of which they are members. Discharge may be General (Under Honorable Conditions) or Other Than Honorable when an officer requests such characterization, and such characterization is consistent with guidelines contained in enclosure (5) of this instruction.

2. Release of Reserve Officers from Active Duty. CHNAVPERS or DC/S (M&RA) may, acting for the Secretary, release Reserve officers upon their request from active duty for reasons set forth in paragraph 5 of this enclosure, unless processing for separation for cause under paragraph 1 of enclosure (3) is warranted.

17 MAR 1993

3. Regular Officers Requesting Reserve Commissions Upon Resignation

a. Regular officers requesting resignation under the provisions of this enclosure who have completed the statutory service obligation referred to in paragraph 4a of this enclosure and who request a Reserve commission upon resignation from the regular Navy or Marine Corps shall normally be tendered such a commission, provided a requirement exists for the officer's skill in the grade and competitive category in which the officer would serve in the Naval or Marine Corps Reserve. CHNAVPERS and DC/S (M&RA) shall neither tender nor award Reserve commissions to such officers whose voluntary resignation request is incident to separation in lieu of trial by court-martial under enclosure (3) or in lieu of separation for cause processing under enclosure (4).

b. The Marine Corps Reserve has no limited duty officers (LDOs). Marine Corps Regular LDOs requesting resignation from the regular Marine Corps who request a Reserve commission shall normally be tendered such a commission in the warrant officer grade they would have held had they been serving as a warrant officer in the regular Marine Corps, provided a requirement exists for their military occupational specialty (MOS) in that grade in the Marine Corps Reserve.

c. Regular officers whose requests for Reserve commissions are approved shall be assigned in the Ready Reserve upon resignation from the regular Navy or Marine Corps and acceptance of the appointment in the Naval or Marine Corps Reserve.

4. Statutory Service Obligation

a. Under the guidance provided by DOD Directive 1304.25 of 17 March 1986 (NOTAL), each person who becomes a member of the Armed Forces on or after 1 June 1984 shall serve in the Armed Forces for a total of 8 years. Any part of the service obligation that is not performed on active duty shall be performed in a Reserve component.

b. Except for reasons of dependency or hardship (paragraph 5d(1) of this enclosure), resignation requests from regular officers who have not completed the statutory service obligation referred to in paragraph 4a of this enclosure will normally be approved only upon acceptance of a Reserve commission that shall be held at least until completion of such service.

c. Except for reasons of dependency or hardship or for discharge to become a minister (paragraphs 5d(1) and 5h of this

17 MAR 1993

enclosure), resignation requests from Reserve officers who have not completed the statutory service obligation referred to in paragraph 4a of this enclosure will normally be denied by CHNAVPERS or DC/S (M&RA). However, Reserve officers who are serving on active duty may be voluntarily released from active duty for reasons set forth in paragraph 5 of this enclosure and transferred to the Ready Reserve until completion of that obligation, unless medical reasons preclude such transfer. Such releases from active duty shall be accomplished by CHNAVPERS or DC/S (M&RA), under the provisions of section 681 of reference (a) and this instruction.

d. CHNAVPERS and DC/S (M&RA) may waive active obligated service incurred for technical training in cases where a member who has completed technical training is permanently disqualified for operational services in his or her designator, warfare specialty, military occupational specialty, or special qualification through no fault of the member.

5. Reasons for Voluntary Separation

a. Expiration of Statutory Service Obligation. An officer may be separated upon completion of the statutory service obligation referred to in paragraph 4a of this enclosure provided the officer has no other obligated service.

b. Expiration of Obligated Service. An officer may be separated upon completion of all service prescribed in the officer program through which accessed, any other obligation incurred by the officer in consideration for being tendered an initial appointment, and any additional obligated service incurred by the officer while serving on active duty, or in an active status in the Ready Reserve.

c. Change of Career Intention. Some officers who completed their minimum service requirement and then decided to remain on active duty intending to serve full careers may later seek separation before attaining retirement eligibility to pursue a civilian career. Officers who submit resignations after continuing in service beyond their minimum service requirement shall be separated for Change of Career Intention unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

d. Convenience of the Government. An officer may be separated for the Convenience of the Government for the reasons set forth below. Separation of an officer for the Convenience of the Government is subject to the resolution of any outstanding disciplinary actions involving the officer.

17 MAR 1993

(1) Dependency or Hardship. Separation of an officer may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the service, and the officer has made every reasonable effort to remedy the situation;

(c) Separation will eliminate or materially alleviate the condition; and

(d) There are no other means of alleviation reasonably available.

(2) Pregnancy or Childbirth. A female officer will normally be separated by reason of pregnancy or childbirth upon her request unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(a) Notwithstanding the limitations in paragraph 1c(1) of this enclosure, the Secretary may approve a request for separation on a case-by-case basis when the applicant has demonstrated overriding and compelling factors of personal need which justify separation for pregnancy or childbirth.

(b) Women may apply for separation by reason of pregnancy or childbirth after certification of pregnancy by a qualified health care provider. CHNAVPERS and DC/S (M&RA) will prescribe the maximum period possible for eligible officers to consider this course of action, in order to minimize subsequent separations for parenthood or dependency and provide prompt replacement of separated personnel.

(3) Conscientious Objection. An officer shall be separated if authorized under DOD Directive 1300.6, "Conscientious Objectors," of 20 August 1971 (NOTAL).

(4) Surviving Family Member. An officer shall be separated if authorized under DOD Directive 1315.15, "Special Separation Policies for Survivorship," of 26 September 1988 (NOTAL).

(5) Separation of Aliens. An officer who is an alien, an individual who is neither a natural born nor a naturalized

17 MAR 1993

citizen of the United States, may be separated on the basis of being an alien who no longer wishes to serve.

(a) The request will normally be denied when retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(b) Notwithstanding the limitations in subparagraph 5d(5)(a), a request for separation may be approved when, in the judgment of CHNAVPERS or DC/S (M&RA), the applicant has demonstrated overriding and compelling factors of a personal need which justify separation.

(6) Separation to Accept Public Office. Unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure, an officer who has completed the obligated service referred to in paragraph 5b of this enclosure may be separated for the purpose of performing the duties of the President or Vice President of the United States; a Presidential appointee to a statutory office; a member of either of the legislative bodies of the U.S.; a Governor; any other state official chosen by the voters of the entire state or states; or a judge of courts of record of the U.S., the states, or the District of Columbia.

(7) Officers Married to Other Servicemembers. Unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure, an officer may be separated who has completed the obligated service, referred to in paragraph 5b, and who cannot be stationed near enough to the spouse to permit the maintenance of a joint residence.

(8) Separation to Attend College. At the discretion of CHNAVPERS or DC/S (M&RA), officers may be separated for the purpose of enrolling in a full-time course of study leading to a baccalaureate degree or graduate degree, provided such separation occurs within 90 days of the date of expiration of the obligated service, referred to in paragraph 5b of this enclosure, and retention is not warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

e. Interservice Transfers. CHNAVPERS or DC/S (M&RA) may act upon requests for interservice transfers under the following guidelines, when both the losing and gaining services agree. When the two services disagree, the applications will be submitted to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) with recommendations and supporting rationale.

(1) Interservice Transfers to Another Military Department. An officer may be separated from the service for the purpose of transfer to another military department under SECNAVINST 1000.7D upon expiration of any obligated service, referred to in paragraph 5b of this enclosure, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(2) Intraservice transfers within the Department of the Navy. Intraservice transfers between the Navy and the Marine Corps may be authorized under SECNAVINST 1000.7D, normally upon expiration of any obligated service, referred to in paragraphs 1c(1) and 5b of this enclosure.

f. Selected Changes in Service Obligations. An officer may be separated under specific programs established by the CNO or CMC permitting separation within 90 days of the date of expiration of active obligated service. Such programs shall have as objectives the maintenance of prudent management flexibility and the conservation of limited resources. An example of such a program is the release of an officer from active duty prior to extended deployment to avoid separation outside the continental United States. The CNO and CMC shall submit to the Secretary, for approval and incorporation into this instruction, the reasons for separation under these programs prior to their implementation. The following reasons for separation are authorized under this paragraph when it is determined by the CHNAVPERS or DC/S (M&RA) that such separations are more economical or efficient for the Government:

(1) Separation Upon Completion of Overseas Tours. Officers having less than 90 days of obligated service, referred to in paragraph 5b of this enclosure, remaining upon completion of an overseas tour other than Hawaii, may be separated upon completion of that tour, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(2) Separation for Major Federal Holidays. Officers whose obligated service, referred to in paragraph 5b of this enclosure, expires during a federal holiday program established by the CNO or CMC may be separated at the commencement of that program, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

g. Retirement. An officer may be retired if requested and if eligible and authorized under SECNAVINST 1811.3M or SECNAVINST 1820.2.

h. Discharge of A Reservist To Become A Minister. An officer who becomes a regular or ordained minister of a religious faith group is entitled, upon his/her request, to be discharged from the Naval or Marine Corps Reserve per section 1162 of reference (a), if the officer satisfactorily establishes that:

(1) they will, or do regularly, engage in religious preaching and teaching;

(2) the ministry is, or will be their main and primary calling--a vocation rather than avocation;

(3) their standing in the congregation is, or will be, recognized as that of a minister or leader of a group of lesser members; and

(4) their religious faith group is organized exclusively or substantially for religious purposes.

i. Failure to Receive Initial Appointment Benefits. Newly appointed officers may be separated at their request or with their consent for failure or inability on the part of the naval service to give the benefits promised incident to initial appointment; e.g., service credit or entry grade. The screening for mobilization potential specified in paragraph 12 of enclosure (3) for Reserve component officers is not applicable. Newly appointed officers separated for this reason have not served the statutory service obligation prescribed in DOD Directive 1304.25 of 17 March 1986 (NOTAL).

j. Expiration of Term of Active Duty Order In The Case of Reservists. Reservists may be released from active duty at the expiration of their term of service specified in their order to active duty.

6. Expungement of Resignations from Officer Service Record

a. CHNAVPERS and DC/S (M&RA) will, upon their approval of an officer's written request to withdraw a resignation, expunge the following from the officer's official record:

(1) For officers on active duty - resignations, disapproved resignations, and related correspondence in its entirety.

(2) For officers who resign and subsequently return to active duty in the naval service - portions of resignation correspondence which contain reasons for resignation. Such

17 MAR 1993

expungements will include portions from letters of intent to resign and letters of resignation and endorsements.

b. Other resignation related material such as separation orders, fitness reports, and DD 214, Certificates of Release or Discharge from Active Duty, will not be expunged.

POLICY GOVERNING INVOLUNTARY SEPARATION

1. Separation for Cause. Officers who do not maintain required standards of performance or professional or personal conduct may be disciplined when appropriate and/or may be processed for separation for cause in accordance with this instruction when there is reason to believe that one or more of the following circumstances exist. Nothing in this instruction is intended to preclude trial by court-martial when appropriate.

a. Substandard Performance of Duty. Inability of an officer to maintain adequate levels of performance or conduct as evidenced by one or more of the following reasons:

(1) Failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade.

(2) Failure to achieve or maintain acceptable standards of proficiency required of an officer in the member's grade.

(3) Failure to properly discharge duties expected of officers of the member's grade and experience.

(4) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer has been ordered to undergo.

(5) A record of marginal service over an extended time as reflected in fitness reports covering two or more positions and signed by at least two reporting seniors.

(6) Personality disorders, when such disorders interfere with the officer's performance of duty and have been diagnosed by a physician or clinical psychologist in accordance with the Section on Mental Disorders, International Classification of Diseases and Injuries-9 (ICD-9), and Diagnostic and Statistical Manual (DSM-III) of Mental Disorders, 3rd Edition, Committee on Nomenclature and Statistics, American Psychiatric Association, Washington, D.C. 1978 and the NAVMED P117 "Manual of the Medical Department."

(7) An officer who has been referred to a program of rehabilitation for personal abuse of drugs may be separated for failure, through inability or refusal, to participate in or successfully complete such a program. Nothing in this provision

21 NOV 1983

precludes separation of an officer who has been referred to such a program under any other provision of this instruction in appropriate cases.

(8) An officer who has been referred to a program of rehabilitation for alcohol abuse may be separated for failure, through inability or refusal, to participate in or successfully complete such a program. Nothing in this provision precludes separation of an officer who has been referred to such a program under any other provision of this instruction in appropriate cases.

(9) Failure to conform to prescribed standards of dress, weight, personal appearance, or military deportment.

(10) Unsatisfactory performance of a warrant officer, not amounting to misconduct, or moral or professional dereliction.

b. Misconduct, or Moral, or Professional Dereliction.
Performance or personal or professional conduct (including unfitness on the part of a warrant officer) which is unbecoming an officer as evidenced by one or more of the following reasons:

(1) Commission of a military or civilian offense which, if prosecuted under the UCMJ, could be punished by confinement of six months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction.

(2) Unlawful drug involvement. Processing for separation is mandatory. An officer shall be separated if an approved finding of unlawful drug involvement is made. Exception to mandatory processing or separation may be made on a case-by-case basis by the Secretary when the officer's involvement is limited to personal use of drugs and the officer is judged to have potential for future useful service as an officer and is entered into a formal program of drug rehabilitation under reference (f).

(3) Homosexuality. The basis for separation may include preservice, prior service, or current service conduct or statements. Processing for separation is mandatory. No officer shall be retained without the approval of the Secretary of the Navy when an approved finding of homosexuality is made. An officer shall be separated under this provision if one or more of the following approved findings is made:

21 NOV 1983

(a) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are further approved findings that:

1. such conduct is a departure from the member's usual and customary behavior; and

2. such conduct under all the circumstances is unlikely to recur; and

3. such conduct was not accomplished by use of force, coercion or intimidation by the member during any period of military service; and

4. under the particular circumstances of the case, the member's continued presence in the naval service is consistent with the interest of the naval service in proper discipline, good order and morale; and

5. the member does not desire to engage in or intend to engage in homosexual acts.

(b) The member has stated that he or she is a homosexual or bisexual or has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved), unless there are further findings that the member is not homosexual or bisexual or that the purpose of the claim or the marriage was the avoidance or termination of military service, in which case the officer shall be processed for separation for misconduct by reason of intentional misrepresentation of material fact in official written documents or official oral statements.

(4) Sexual perversion.

(5) Intentional misrepresentation or omission of material fact in obtaining appointment.

(6) Fraudulent entry into an Armed Force or the fraudulent procurement of commission or warrant as an officer in an Armed Force.

(7) Intentional misrepresentation or omission of material fact in official written documents or official oral statements.

21 NOV 1983

(8) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer has been ordered to undergo when such failure is willful or the result of gross indifference.

(9) Marginal or unsatisfactory performance of duty over an extended period, as reflected in successive periodic or special fitness reports, when such performance is willful or the result of gross indifference.

(10) Intentional mismanagement or discreditable management of personal affairs, including financial affairs.

(11) Misconduct or dereliction resulting in loss of professional status, including withdrawal, suspension, or abandonment of license, endorsement, certification, or clinical medical privileges necessary to perform military duties in the officer's competitive category or Marine Corps Occupational Field. When the loss of professional qualification results solely from the removal of ecclesiastical endorsement, processing under paragraph 2 of this enclosure is required.

(12) A pattern of discreditable involvement with military or civilian authorities, notwithstanding the fact that such misconduct has not resulted in judicial or nonjudicial punishment under the UCMJ.

(13) Conviction by civilian authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty, which, if service connected, would amount to an offense under the UCMJ.

c. Retention is not Consistent with the Interests of National Security. An officer (except a retired officer) may be separated from the naval service when it is determined that the officer's retention is clearly inconsistent with the interests of national security. This provision applies when a determination has been made under the provisions of reference (g) that administrative separation is appropriate. An officer considered for separation under the provisions of reference (g) will be afforded all the rights provided in enclosure (8) of this instruction.

21 NOV 1983

d. Separation in Lieu of Trial by Court-Martial

(1) Basis. An officer may be separated in lieu of trial by court-martial upon the officer's request if charges have been preferred with respect to an offense for which a punitive discharge is authorized. This provision may not be used as a basis for separation when section B of paragraph 127c of Manual for Courts Martial provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial authorized to adjudge a punitive discharge.

(2) Characterization of Service. Under Other Than Honorable Conditions, but General may be warranted under the guidelines in enclosure (5). Characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Procedures

(a) The request for discharge shall be submitted in writing and signed by the officer.

(b) The officer shall be afforded an opportunity to consult with qualified counsel. If the member refuses to do so, the commanding officer shall prepare a statement to this effect which shall be attached to the file, and the officer shall state that he/she has waived the right to consult with counsel.

(c) Unless the officer has waived the right to counsel, the request shall also be signed by counsel.

(d) In the written request, the officer shall state that he/she understands the following:

1. The elements of the offense or offenses charged;

2. That characterization of service under Other Than Honorable Conditions is authorized; and

3. The adverse nature of such a characterization and possible consequences.

(e) The request shall also include:

21 NOV 1983

1. An acknowledgement of guilt of one or more of the offenses charged, or of any lesser included offense, for which a punitive discharge is authorized; and

2. A summary of the evidence or list of documents (or copies thereof) provided to the officer pertaining to the offenses for which a punitive discharge is authorized.

(f) Statements by the officer or the officer's counsel submitted in connection with a request under this subsection are not admissible against the member in a court-martial except as provided by Military Rule of Evidence 410, Manual for Courts Martial.

e. Multiple Reasons. An officer shall be processed for separation for any applicable number of the aforementioned reasons.

2. Removal of Ecclesiastical Endorsement. Officers on the active-duty list in the Chaplain Corps who can no longer continue professional service as a chaplain because an ecclesiastical endorsing agency has withdrawn its endorsement of the officer's continuation on active duty as a chaplain, shall be processed for separation in accordance with reference (h) and this instruction, using the Notification Procedures contained in reference (h). Processing solely under this paragraph is not authorized when there is reason to process for separation for cause under any other provision of this instruction, except when authorized by the Secretary in unusual circumstances based upon a recommendation by the Chief of Naval Personnel.

3. Failure of Selection for Promotion. It is Department of the Navy policy to retain competent and effective officers who satisfy the authorized strength needs, by grade, competitive category, or special skills authorized by the Chief of Naval Operations or the Commandant of the Marine Corps, of the Navy and Marine Corps. However, some officers, who may be less qualified to fill skill needs, must be terminated by reason of failure of selection for promotion, or by reason of involuntary retirement for years of service. In execution of this policy, officers may be separated or released from active duty for reason of failure of selection and/or years of service as follows:

a. Regular officers above the grade of CW0-4

21 NOV 1983

(1) Regular O-2s, other than limited duty officers, who twice fail of selection for promotion to O-3 shall be Honorably discharged in accordance with section 631 of reference (a) no later than the first day of the seventh calendar month beginning after the month the report of the selection board that considered the officer for the second time is approved.

(2) Regular O-3s and O-4s, other than limited duty officers, who twice fail of selection for promotion to the next higher grade shall be Honorably discharged in accordance with section 632 of reference (a), unless selectively continued to meet requirements in his or her competitive category and grade in accordance with section 637(a) of reference (a), no later than the first day of the seventh calendar month beginning after the month the report of the selection board which considered the officer for the second time is approved, except as provided in (3) below.

(3) Exceptions concerning discharge under paragraph (2) above:

(a) A female officer appointed under section 5590 of reference (a) who before 15 September 1981 had not twice failed of selection for promotion to the next higher grade and is not selected for promotion to a higher grade on or after 15 September 1981 may not be discharged earlier than such officer would have been discharged had reference (i) not been enacted.

(b) A female officer appointed under section 5590 of reference (a) before 15 September 1981 or a Nurse Corps officer who:

1. Was serving in the grade of O-3 on 15 September 1981; and who

2. Would have been discharged under section 6396(c) or 6401 of reference (a) on 30 June of the fiscal year in which that officer was not on a promotion list and had completed 13 years of active commissioned service; and who

3. Is subject to discharge under section 632 of reference (a) because such officer had twice failed of selection for promotion---

17 MAR 1993

shall, if such officer has not completed 13 years of active commissioned service at the time otherwise prescribed for the discharge of such officer under such section and such officer so requests, not be discharged until 30 June of the fiscal year in which the officer completes 13 years of active commissioned service.

(c) A female officer appointed under section 5590 of reference (a) before 15 September 1981 or a Nurse Corps officer who:

1. Was serving in the grade of O-2 on 15 September 1981; and who

2. Would have been discharged under section 6396(d) or 6402 of reference (a) on 30 June of the fiscal year in which that officer was not on a promotion list and had completed 7 years of active commissioned service; and who

3. Is subject to discharge under section 631 of reference (a) because the officer had twice failed of selection for promotion -- shall not be discharged until 30 June of the fiscal year in which the officer completes 7 years of active commissioned service if the officer has not completed 7 years of active commissioned service at the time otherwise prescribed for the discharge under specified section and the officer so requests.

(d) Per DOD Directive 1320.8, "Continuation of Regular Commissioned Officers on Active Duty," 18 September 1981 (NOTAL), Regular officers serving in the grade of O-4 who are subject to discharge under section 632(a) of reference (a) shall normally be selected for continuation by selective continuation boards if the officer will qualify for retirement under section 6323 within 6 years of the date of such continuation, unless the officer is being processed for separation for cause.

R) (4) Regular O-5s, unless selectively continued to meet requirements in his or her competitive category and grade per section 637(b) of reference (a) shall, if not on a promotion list to O-6, be involuntarily retired on the first day of the month after the month in which they complete 28 years of active commissioned service per section 633 of reference (a).

However, O-5s who are not on a promotion list may be subject to selective early retirement after two failures of selection to O-6 in accordance with section 638 of reference (a).

(5) Regular O-6s, unless selectively continued to meet requirements in his or her competitive category and grade in accordance with section 637(b) of reference (a), shall, if not on a promotion list to O-7, be involuntarily retired on the first day of the month after the month in which they complete 30 years of active commissioned service in accordance with section 634 of reference (a). However, O-6s who are not on a promotion list may be subject to selective early retirement after four years in grade in accordance with section 638 of reference (a).

(6) Unless continued under section 637(b) of reference (a), a Regular officer serving in the grade of O-7 who is not on a promotion list to O-8 shall, if not retired earlier, be retired on the first day of the first month beginning after the date of the fifth anniversary of his or her appointment to that grade or on the first day of the month after the month in which he or she completes thirty years of active commissioned service, whichever is later, in accordance with section 635 of reference (a). Such officer is, however, subject to selective early retirement under the provisions of section 638 of reference (a) if he or she has served at least three and one-half years of active duty in the O-7 grade and is not on a list for promotion to O-8.

(7) Unless continued under section 637(b) of reference (a), a Regular officer serving in the grade O-8 shall, if not retired earlier, be retired on the first day of the first month beginning after the fifth anniversary of his or her appointment to that grade or on the first day of the month after the month in which he or she completes thirty-five years of active commissioned service, whichever is later, in accordance with section 636 of reference (a). Such officer is, however, subject to selective early retirement under the provisions of section 638 of reference (a) if he or she has served at least three and one-half years of active duty in the grade of O-8.

(8) Regular officers, other than warrant officers and limited duty officers, serving in the grades of O-4, O-5, and O-6 on 15 September 1981, or who were on a promotion list to such grades on that day, shall be retired on the date provided under the laws in effect on 14 September 1981, unless promoted or continued after that date under the provisions of reference (i).

21 NOV 1983

(9) A Regular officer of the Navy having the grade of Rear Admiral or who was on a promotion list to such grade on 14 September 1981 shall be continued on active duty or retired in accordance with the laws in effect on 14 September 1981, unless promoted under the provisions of reference (i).

(10) A Regular Marine Corps officer having the grade of Brigadier General or who was on a promotion list to such grade on 14 September 1981 shall be retired in accordance with the laws in effect on 14 September 1981, unless promoted under the provisions of reference (i).

(11) Officers for whom no means could be established under the laws in effect on 14 September 1981 for computing creditable service in determining an involuntary discharge or retirement date shall be discharged or retired in accordance with procedures established under sections 613 and 624 of reference (i) as set forth in reference (j).

(12) A deferral of retirement or separation and continuation on active duty shall not extend beyond the date of the officer's sixty-second birthday. In the case of officers serving in a grade above O-8, the Chief of Naval Operations or the Commandant of the Marine Corps may recommend to the Secretary deferral of retirement until the first day of the month following the month in which the officer becomes 64 years of age. No more than ten deferments to age 64, for all the armed forces, may be in effect at any one time to meet unusual requirements of the service.

(13) Notwithstanding any other section of this paragraph (failure of selection), an officer who is within two years of qualifying for retirement under section 6323 of reference (a) on the date on which he/she is to be discharged shall be retained on active duty until qualified for retirement under that section of law unless sooner discharged or retired for cause under the provisions of this instruction.

b. Reserve officers above the grade of CWO-4

(1) Naval Reserve officers on the active-duty list:

31 JAN 1996

(a) In the grades of 0-5 and below: whose names are not on a promotion list and who twice fail of selection for promotion to a higher grade shall be involuntarily released from active duty no later than the first day of the seventh calendar month beginning after the report of the selection board which considered the officer for the second time is approved. However, officers subject to separation under this paragraph may be selectively retained on active duty by a board convened by the CHNAVPERS under the provisions of paragraph 14 of this enclosure, based on a need for that officer's specific skills and unique qualifications.

(b) In the grade of 0-6: Shall be given an opportunity to request transfer to the Retired Reserve if qualified, or will be released from active duty at the end of their current obligation unless retained through the Administrative Retention Board, or will be discharged on the first day of the month following the month in which the officer completes 30 years total commissioned service in accordance with section 6389 of reference (a).

(2) Marine Corps Reserve officers on active duty in the grades of 0-2 or 0-3, who twice fail of selection for promotion to the next higher grade, shall be Honorably discharged no later than the first day of the seventh calendar month after the month in which the report of the selection board that considered them for the second time is approved. Officers separating under this guidance who are authorized full payment of nondisability separation pay will enter into a written agreement to serve in the Ready Reserve for a period of not less than 3 years following separation from active duty.

(3) Marine Corps Reserve field grade officers serving as active duty in the Career Reserve (Unlimited Active Duty) program or in the Extended Duty Reservist (EDR) program on 15 September 1981 including officers on a promotion list to major at that time may remain on active duty until elimination from an active status under the provisions of paragraph 3b(5) of this enclosure. Other Marine Corps Reserve field grade officers serving on active duty shall be released from active duty upon expiration of active service, as specified in the agreement under which serving. Such officers may serve in the Ready Reserve until elimination from active status under the provisions of paragraph 3b(5) of this enclosure.

(4) Naval Reserve Officers on active duty designated for Training and Administration Reserves (TAR):

(a) In the grade of 0-2: who twice fail of selection for promotion to a higher grade shall be Honorably discharged no later than the first day of the seventh calendar month beginning

31 JAN 1996

after the report of the selection board that considered the officer for the second time is approved. If an officer subject to discharge under this paragraph has not completed 6 years commissioned service he or she shall be released from active duty and retained in an active status until the completion of 6 years in a commissioned status.

(b) In the grade of 0-3: who twice fail of selection for promotion to a higher grade shall be involuntarily released from active duty no later than the first day of the seventh calendar month beginning after the report of the selection board that considered the officer for the second time is approved.

R) (c) In the grade of 0-4: who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty and, if qualified, shall be given the opportunity to transfer to the Retired Reserve. Release from active duty will occur not later than the first day of the seventh calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved. If an officer is not transferred to the Retired Reserve, he or she shall be discharged on the first day of the month after the month in which the officer completes 20 years total commissioned service. Release from active duty or discharge, or both, will be deferred for up to 5 years, if necessary, to enable the officer on active duty, who could qualify for retirement during that period, to qualify for retirement with pay under section 6323 of reference (a). Deferment may not extend beyond the first day of the month following the month in which the officer first becomes eligible for retirement (including early retirement).

(d) In the grade of 0-5: who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty. Release will occur not later than the first day of the seventh calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved. Release will be deferred, if necessary, to enable the officer to become eligible for retirement with pay, but not later than the first day of the month following the month in which the officer completes 26 years total commissioned service, at which time he or she shall be given an opportunity to request transfer to the Retired Reserve, if qualified, or be Honorably discharged, as required by section 6389 of reference (a).

(d) In the grade of 0-6: if not on a promotion list to a higher grade, shall be involuntarily released from active duty at the end of 3 years time in grade as 0-6,

21 NOV 1983

unless retained by a selective Retention Board. The Chief of Naval Personnel shall convene a TAR Captain Selective Retention Board under the provisions of paragraph 14 of this enclosure whenever required to selectively retain the TAR captains best fitted to meet requirements. Officers retained will be released from active duty at the end of the fifth fiscal year following the fiscal year of promotion, unless further retained by the TAR Captain Retention Board, during that year, to serve until completing 30 years of total commissioned service. Release will be deferred, if necessary, to enable the officer to become eligible for retirement with pay, but not later than the first day of the month following the month in which the officer completes 30 years total commissioned service, at which time he or she shall be given an opportunity to request transfer to the Retired Reserve, if qualified, or be Honorably discharged as required by section 6389 of reference (a).

(f) Above the grade of O-6: will be involuntarily released from active duty on the first day of the month following the month in which the officer completes four years in grade as a flag officer.

(5) Naval and Marine Corps Reserve (not on active duty); elimination from an active status:

(a) Subject to the completion of obligated service under section 651 of reference (a), a Reserve officer, other than a woman Reserve officer, or a Reserve officer in the Nurse Corps, serving in the grades of O-2 or O-3 in an active status who twice fails of selection to the next higher grade shall be eliminated from an active status in accordance with section 6389 of reference (a). Naval Reserve officers will be retained in an active status until the completion of six years actual commissioned service.

(b) A Reserve officer in an active status, other than a woman Reserve officer or a Reserve officer in the Nurse Corps, serving in the grades of O-4, O-5, or O-6 who twice fails of selection to the next higher grade shall be eliminated from an active status upon the completion of 20, 26, and 30 years of total commissioned service, respectively, in accordance with section 6389 of reference (a). The Chief of Naval Personnel, acting for the Secretary, shall defer the mandatory separation under this paragraph of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Reserve. The maximum

period of such deferment shall be five years. No officer shall receive such deferment if he or she cannot complete at least 20 years of service as computed under section 1332 of reference (a) during the period of such deferment. The Secretary shall defer the retirement or discharge under this subsection of such number of officers serving in the permanent grade of captain or commander in the Medical Corps in the Naval Reserve as are necessary to provide for mobilization requirements as established by the Chief of Naval Operations.

(c) The Chief of Naval Personnel or the Commandant of the Marine Corps shall defer the retirement or discharge under this paragraph of an officer serving in the permanent grade of lieutenant commander or above in the Naval Reserve or in the permanent grade of major or above in the Marine Corps Reserve for a period of time which does not exceed the amount of constructive service credit in an active status which was credited to the officer at the time of his or her original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 1332 of reference (a) during the period of such deferment.

(d) A woman officer in any grade of the Marine Corps Reserve shall be eliminated from an active status under conditions prescribed for the retirement or discharge of a woman officer in the Marine Corps in the same grade on the active-duty list of the Marine Corps, or at any time after those conditions are met.

(e) Each officer of the Naval or Marine Corps Reserve in an active status in the permanent grade of O-7, shall, 30 days after he or she completes 30 years of total commissioned service computed under section 6389(d) of reference (a) or on the fifth anniversary of the date of his or her appointment to that grade whichever is later, be transferred to the Retired Reserve, if qualified and applies therefore, or discharged from the Navy or Marine Corps Reserve if not qualified or does not apply therefore. An officer who has been recommended for promotion and who would otherwise be removed from an active status under this paragraph shall be retained in that status until appointed or refused appointment to the permanent grade of O-8.

(f) Each officer of the Naval or Marine Corps Reserve in an active status in the permanent grade of O-8 shall,

30 days after he or she completes 35 years of total commissioned service computed under section 6389(d) of reference (a) or on the fifth anniversary of the date of his or her appointment to that grade, whichever is later, be given an opportunity to request transfer to the appropriate Retired Reserve, if qualified, or be Honorably discharged from the Naval or Marine Corps Reserve.

(g) A Reserve officer of the Navy who on 14 September 1981 was in an active status in the grade of rear admiral or was on a promotion list to that grade is not subject to subparagraphs (e) and (f).

(6) Notwithstanding any other provision in this paragraph, the following provisions of sections 1006 and 1163 of reference (a) are applicable to Reserve officers in an active status:

(a) A Reserve officer who is entitled to be credited with at least 18 but less than 19 years of service computed under section 1332 of reference (a) on the date prescribed for discharge or transfer from an active status, may not be discharged or transferred from an active status without his or her consent before the earlier of the following dates:

1. The date on which he or she is entitled to be credited with 20 years of service computed under section 1332 of reference (a); or

2. The third anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

(b) A Reserve officer who is entitled to be credited with at least 19, but less than 20 years of service computed under section 1332 of reference (a) on the date prescribed for discharge or transfer from an active status may not be discharged or transferred from an active status without his or her consent before the earlier of the following dates:

1. The date on which he or she is entitled to be credited with 20 years of service, computed under section 1332 of reference (a); or

2. The second anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

17 MAR 1993

(c) A Reserve officer on active duty (other than for training) who is within 2 years of qualifying for retirement under section 6323 of reference (a) on the date on which he or she would otherwise be removed from an active status, shall not be involuntarily released from active duty before qualifying for retirement under that section, unless the officer reaches an age at which transfer from an active status or discharge is required under paragraph 11 of this enclosure. An officer who is retained on active duty under this provision may not be removed from an active status while he or she is on that active duty, except when separated for cause.

(d) A Reserve officer who is on active duty and is within 2 years of becoming eligible for retired pay under a purely military retirement system, may not be involuntarily released from that duty before he or she becomes eligible for that pay, except when separated for cause.

(e) An officer of the Naval Reserve whose retirement or discharge was deferred under paragraphs 3b(4) or 3b(5) of this enclosure and per section 6389 of reference (a) shall not have his or her retirement or discharge deferred under sections 1006 or 1163 of reference (a).

c. Limited Duty Officers

(1) Permanent LDO's. The separation and retirement of regular permanent limited duty officers are governed by section 6383 of reference (a).

- A) (a) Unless selectively continued to meet requirements of his or her competitive category and grade per procedures under references (k) or (l), each regular permanent limited duty officer below O-5 shall be retired on the last day of the month following the month in which he or she completes 30 years of active naval service, exclusive of active duty for training in a Reserve component. A permanent limited duty officer serving in the grade of O-4, who twice fails of selection to O-5, may be selectively continued on active duty until the completion of 24 years of active commissioned service. Under no circumstances may a limited duty officer remain on active duty beyond age 62.
- D)

(b) Each permanent limited duty officer serving in the grades of O-2 or O-3 who has twice failed of selection for promotion to the next higher grade and is not on a promotion list to a higher grade shall be Honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board in which the officer failed of selection for the second time.

(c) A limited duty officer serving in the permanent grade of O-1 who is not qualified for promotion to O-2 or a limited duty officer serving in the permanent grade of O-2 or O-3 who has twice failed of selection for promotion to O-3 or O-4, respectively, and who had the permanent status of a warrant officer when first appointed an LDO under section 5589 of reference (a) has the option of reverting to the grade and status the officer would have held if the officer had not been so appointed, provided the officer has not been required to show cause for retention on active duty under this instruction. If any such officer had a permanent grade below the grade of warrant officer, W-1, when first so appointed, the officer has the option of reverting to the grade and status the officer would hold if the officer had not been so appointed but instead had been appointed a warrant officer, W-1. In any computation to determine the grade and status to which an officer may revert, all active service as an LDO or as a temporary or Reserve officer shall be included.

(2) Temporary LDO's

(a) The appointments of temporary LDOs who are not selectively continued on active duty under reference (k) or (l) are terminated on the earlier of the following dates: (1) the last day of the month following the month in which the officer completes 30 years of active naval service, other than active duty for training or (2) a date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh month beginning after the month in which the Secretary approves the report of the promotion selection board in which the officer is considered as having failed of selection for promotion to the next higher temporary grade for the second time.

21 NOV 1983

1. A temporary LDO with a permanent Regular warrant officer status whose LDO appointment is terminated will be afforded the option of voluntary retirement in lieu of reversion to permanent warrant officer status. A temporary LDO who reverts to a permanent warrant officer status is subject to involuntary retirement or Honorable discharge as a warrant officer under applicable statutes and as provided for under paragraph 3d of this enclosure.

2. A temporary LDO with a permanent Regular enlisted status whose appointment is so terminated will be afforded the option of voluntary retirement in lieu of reversion to permanent enlisted status and, where applicable, Honorable discharge by reason of expiration of enlistment.

(b) A temporary LDO who is not eligible for retirement under section 6323 of reference (a) and who has twice failed of selection to the next higher temporary grade, may either be retained on active duty in the temporary grade held if within two years of retirement eligibility under section 6323 of reference (a) as of 30 June of the fiscal year in which the second failure of selection occurs, or may be reverted to permanent warrant officer or enlisted status if not within two years of attaining retirement eligibility.

d. Permanent Regular Warrant Officers

(1) Unless selectively continued on active duty in the Navy under reference (k), or in the Marine Corps under reference (l), a permanent Regular warrant officer who has at least 30 years of active service shall be retired 60 days after he or she completes that service, except as provided by section 8301 of Title 5, United States Code, which provides that retirements are effective on the first day of the month following the month in which the retirement would otherwise be effective.

(2) Unless retired or separated under some other provision of this instruction, a permanent Regular warrant officer who has twice failed of selection for promotion to the next higher permanent warrant officer grade shall:

(a) If he or she has more than 20 years of active service on (1) the date when the Secretary of the Navy approves the report of the board under section 560(g) of reference (a); or (2) the date when his or her name was removed from a promotion list under section 562(a) of reference (a), whichever applies, be retired 60 days after that date.

21 NOV 1983

(b) If he or she has at least 18 but not more than 20 years of active service on (1) the date when the Secretary of the Navy approves the report of the board under section 560(g) of reference (a); or (2) the date when his or her name was removed from a promotion list under section 562(a) of reference (a), whichever applies, be retired 60 days after the date upon which he or she completes 20 years of active service, unless selected for promotion to the next higher permanent warrant officer grade before that date.

(c) If he or she has less than 18 years of active service on (1) the date when the Secretary of the Navy approves the report of the board under section 560(g) of reference (a); or (2) the date when his name was removed from a promotion list under section 562(a) of reference (a), whichever applies, be Honorably discharged from the Regular Navy or Marine Corps 60 days after that date.

(3) Notwithstanding paragraph 3d(2)(c) above, a permanent Regular warrant officer with less than 18 years of active service creditable toward retirement who is subject to discharge as a result of having twice failed of selection to the next higher permanent warrant officer grade, and who holds a temporary appointment in a grade above CWO-4, shall continue serving on active duty until qualified for retirement under reference (a).

(4) Notwithstanding paragraph 3d(2)(c) above, a permanent Regular warrant officer with less than 18 years of active service creditable toward retirement who is subject to discharge as a result of having twice failed of selection to the next higher permanent warrant officer grade, may request enlistment and, in the discretion of the Secretary of the Navy, be enlisted in a grade prescribed by the Secretary, but not in a grade lower than that held immediately before original appointment as a warrant officer. In making recommendations to the Secretary of the Navy, the Chief of Naval Personnel and the Commandant of the Marine Corps shall consider the individual's record of service as a warrant officer, the length of service performed as a warrant officer, and the relationship of inventory to approved authorizations in the Navy enlisted classification or military occupational specialty in which the individual would serve in an enlisted status.

21 NOV 1983

(5) The Secretary of the Navy may defer, for not more than four months, the retirement or separation of any Regular warrant officer if, because of unavoidable circumstances, evaluation of his or her physical disability requires hospitalization or medical observation that cannot be completed before the date when he or she would otherwise be required to be retired or discharged.

e. Permanent Reserve Warrant Officers

(1) A permanent Reserve warrant officer who has at least 30 years of active service or has completed at least 30 years of service computed under section 1332 of reference (a), shall be transferred to the Retired Reserve or the Naval or Marine Corps Reserve Retired List, as appropriate, not later than six months after he or she completes that service. A warrant officer of the Naval or Marine Corps Reserve who is subject to separation under this paragraph, may be selectively retained to meet requirements identified for his or her grade, competitive category, and designator in accordance with procedures described in reference (1) or (n).

(2) Unless retired or separated under some other provision of this instruction, a Reserve warrant officer who has twice failed of selection for promotion to the next higher permanent warrant officer grade, who is not on a promotion list, and who has:

(a) Performed more than 20 years of active service or who has performed at least 20 years of service computed under section 1332 of reference (a) on (1) the date when the Secretary of the Navy approves the report of the promotion selection board; or (2) the date when his or her name was removed from a promotion list, whichever applies, shall be transferred to the inactive status list, or upon his or her request, to the Retired Reserve or Naval or Marine Corps Reserve retired list, as appropriate.

(b) Performed at least 18 but less than 20 years of service computed under section 1332 of reference (a) on (1) the date when the Secretary of the Navy approves the report of the promotion selection board, or (2) the date when his or her name was removed from the promotion list, whichever applies, shall not be discharged or transferred from an active status without his or her consent before the earlier of the following dates unless sooner separated for cause under paragraph 1 of this enclosure:

17 MAR 1993

1. The date on which he or she is entitled to be credited with 20 years of service computed under section 1332 of reference (a); or

2. If he or she has at least 19 years of service computed under section 1332 of reference (a), the second anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

3. If he or she has at least 18 but less than 19 years of service computed under section 1332 of reference (a), the third anniversary of the date on which he or she would otherwise be discharged or transferred from an active status.

(c) Performed less than 18 years of service computed under section 1332 of reference (a) on (1) the date when the Secretary of the Navy approves the report of the selection board; or (2) the date when his or her name is removed from the promotion list, whichever applies, may request enlistment and in the discretion of the Secretary of the Navy be enlisted in a grade prescribed by the Secretary, but not in a grade lower than that held immediately before original appointment as a warrant officer. In making recommendations to the Secretary of the Navy, the CHNAVPERS and DC/S (M&RA) shall consider the individual's record of service as a warrant officer, the length of service performed as a warrant officer, and the needs of the Service in the Navy enlisted classification or military occupational specialty in which the individual would serve in an enlisted status.

(d) Not requested transfer to the Naval or Marine Corps Reserve retired list as provided in paragraph 3e(2)(a), is not eligible for retention in an active status as provided in paragraph 3e(2)(b), and does not request enlistment as provided in paragraph 3e(2)(c), or is denied enlistment, shall be Honorably discharged from the Naval or Marine Corps Reserve.

(3) A reserve warrant officer on active duty (other than active duty for training) who, on the date when he or she would be otherwise discharged or removed from an active status without his or her consent under paragraph 3e(2), is within 2 years of qualifying for retirement under section 6323 of reference (a), shall not be involuntarily released from active duty before qualifying for retirement under that section, unless the officer reaches an age at which transfer from an active status or

17 MAR 1993

discharge is required. An officer who is retained on active duty under this paragraph may not be removed from an active status while serving on that active duty.

(4) The Secretary of the Navy may defer, for not more than 4 months, the retirement or separation of any warrant officer if, because of unavoidable circumstances, evaluation of his or her physical condition and determination of his or her entitlement to retirement or separation for physical disability requires hospitalization or medical observation that cannot be completed before the date when he or she would otherwise be required to be retired or discharged.

R) f. Temporary Warrant Officers. The appointments of temporary warrant officers (WO) are terminated on the earlier of the following dates: (1) 60 days after the month in which the officer completes 30 years of active naval service, other than active duty for training or (2) a date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh month beginning after the month in which the Secretary approves the report of the promotion selection board in which the officer is considered as having failed of selection for promotion to the next higher temporary grade for the second time. CHNAVPERS or DC/S (M&RA) may act for the Secretary in approving the request of a WO for a termination date earlier than the latest date established under this paragraph. Temporary WOs, subject to reversion under this paragraph, may be selectively retained on active duty by the Retention Board based on a need to meet requirements in undermanned designators, specialties, or military occupational specialties. A temporary WO who is eligible for retirement under section 6323 or 1293 of reference (a), and whose appointment is so terminated, will be afforded the option of voluntary retirement in lieu of reversion to permanent enlisted status.

4. Unqualified for Promotion to O-2

a. Under reference (a), an officer, other than a limited duty officer, serving in the grade of O-1 who is found unqualified for promotion to O-2 shall be honorably discharged no later than the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

17 MAR 1993

b. Each permanent limited duty officer serving in the grade of O-1 who is found not qualified for promotion to the grade of O-2 shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month after the officer was found not qualified for promotion, unless reverted to prior enlisted or warrant officer grade, as authorized by paragraph 3c(1)(c) of this enclosure and section 6383(f) of reference (a).

c. A limited duty officer in the Navy who is serving in the grade of ensign under a temporary appointment who is found not qualified for promotion to the grade of lieutenant (junior grade) by his/her commanding officer shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the officer has been found not qualified for promotion. A limited duty officer serving under a temporary appointment in the grade of ensign may at his/her option in lieu of such discharge be reverted to the permanent status which such officer would have held if the individual had not been appointed as a limited duty officer.

d. An officer subject to separation solely under the provisions of paragraphs 4a or b who has not satisfied his or her statutory military obligation, as described in section 651 of reference (a), shall be retained in a Reserve component in an active status until the expiration of such obligation.

e. The authority to separate an officer under this section shall not be used when separation for cause under the provisions of reference (a) and paragraph 1 of this enclosure is appropriate.

5. Failure to Accept an Appointment to O-2

a. An officer who fails to accept a permanent or temporary appointment to the grade of O-2 shall be processed for an honorable discharge using the notification procedure of enclosure (7).

b. As provided in SECNAVINST 1412.6J, the CHNAVPERS or DC/S (M&RA) may not separate an officer under this section until the officer has satisfied the obligated service, referred to in paragraphs 1c(1) and 4a of enclosure (2). (R

17 MAR 1993

6. Parenthood. An officer may be separated by reason of parenthood if it is determined that the officer is unable to perform his or her duties satisfactorily or is unavailable for worldwide assignment or deployment. The Notification Procedure of enclosure (7) shall be used.

7. General Demobilization or Reduction in Authorized Strength. Reserve officers may be released from active duty as a part of a general demobilization or reduction in authorized strength. However, an officer serving on active duty under an active duty agreement executed under section 679 of reference (a) may not be released from active duty, without his or her consent, during the period of the agreement because of reduction in actual personnel strength, unless his or her release is recommended by a board of officers (other than that prescribed in enclosure (1)) convened by the Secretary of the Navy for the purpose of general demobilization or reduction of authorized strength. Specific procedures governing the convening of such boards will be established by the Secretary when a reduction in authorized strength is required.

8. Release from Active Duty

a. When determined to be in the best interest of the service, the Secretary of the Navy may, in those cases where no other reason for separation is set forth in this instruction, release a Naval or Marine Corps Reserve officer from active duty, without the requirement for the officer to be heard by a Board of Inquiry or any other formal board before the release.

b. The following statutory limitations exist regarding the release of Reserve officers from active duty:

(1) A Reserve officer may be released from active duty (other than for training) in time of war or national emergency declared by Congress or the President after January 1, 1953 only upon the recommendation of a Board of Inquiry approved by the CHNAVPERS or DC/S (M&RA), as appropriate, unless the officer waives the board or his or her release is otherwise authorized by law. This subparagraph does not apply to either the Navy or Marine Corps during a period of demobilization or reduction in strength of that service.

(2) A Reserve officer serving on active duty under an active duty agreement executed under section 679 of reference (a) may not be involuntarily released from active duty during the period of the agreement because of a reduction in authorized

31 JAN 1996

personnel strength or for any other reason unless such release is recommended by a Board of Inquiry as described in enclosure (8), except when he or she is:

(a) dismissed or discharged under the sentence of a court-martial; or

(b) released because of a conviction and sentence to confinement in Federal or State penitentiary or correctional institution and the sentence has become final; or

(c) released under paragraph 3 of this enclosure for having twice failed of selection for promotion.

(3) Under section 1163 of reference (a), a Reserve officer who is on active duty and is within 2 years of becoming eligible for retired pay under a purely military retirement system shall not be involuntarily released from that duty before he or she becomes eligible for that pay, unless his or her release is approved by the Secretary upon processing for separation for cause.

c. Should it be necessary to reduce the number of Full-Time Support (FTS) field grade officers to maintain FTS authorized levels, DC/S (M&RA) may, subject to subparagraph a and b(3) of this paragraph, release Marine Corps field grade officers serving in the FTS program at any time upon the recommendation of an FTS selection board. An FTS colonel who is selected for promotion to brigadier general and who does not decline such a promotion shall be released from active duty by DC/S (M&RA), acting for the Secretary of the Navy, not later than the effective date of the promotion, unless such release is contrary to section 680 or 681 of reference (a).

d. When required, CHNAVPERS shall convene a Selective Early Release from Active Duty (SERAD) Board which shall recommend the early release from active duty of TAR O-5s. CHNAVPERS shall establish numbers for the SERAD board by grouping TAR O-5s by their competitive category and their promotion fiscal year (FY) group. The board must review the record of all eligible TAR officers in each competitive category as of the board's convening date. Normally, O-5s shall become SERAD-eligible during the fourth FY after their date of rank. TAR O-5s who; are not on a promotion list, have attained 20 or more years of commissioned service, as defined in enclosure (1) and are selected by a SERAD board, shall be involuntarily released from active duty by 1 September of the SERAD FY (i.e., the FY in which the SERAD board was convened), or the first day of the seventh month

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31 JAN 1996

following the month in which the SERAD board's report is approved--whichever is later. TAR O-5 SERAD selectees who would have less than 20 years of commissioned service on 1 September of the SERAD FY, will be released from active duty on the first day of the month after the month in which they attain 20 years commissioned service. If necessary, involuntary release will be deferred to enable the officer to qualify for retirement (including early retirement) with pay. Such deferments will end on either the first day of the month following the month in which the officer qualifies for retirement with pay under section 6323 of reference (a), or the day on which he or she must be removed from an active status under section 6389 of reference (a). The officer will then be given an opportunity to request transfer to the Retired Reserve or be honorably discharged. In no case will a SERAD selectee's release from active duty be deferred beyond the first day of the month after the month in which he or she completes 26 years total commissioned service. TAR O-5s considered but not selected by a SERAD board will not be considered again while in the grade of O-5.

9. Selective Early Retirement of Regular Officers Above the Grade of O-4. Under the provisions of section 638 of reference (a) and DOD Directive 1332.32, "Selective Early Retirement of Regular Commissioned Officers on the Active Duty List," 22 January 1982 (NOTAL), regular officers above the grade of O-4 may be considered for early retirement by a selection board convened by the Secretary of the Navy under the provisions of reference (m). The purpose of the selective early retirement provision is to provide a means to manage an officer grade imbalance or strength overage in a competitive category such as may occur during a reduction in force. Selective early retirement shall not be used in cases where separation for cause under the provisions of reference (a) and this instruction is warranted. CHNAVPERS or DC/S (M&RA) shall justify selective early retirement in promotion plans submitted to the Secretary of the Navy in accordance with reference (m).

10. Elimination of Reserve Officers From an Active Status to Provide a Flow of Promotion. Under the provisions of section 6410 of reference (a), a Reserve officer who has completed the obligated service referred to in paragraph 4a of enclosure (2) may be eliminated from an active duty status in order to provide a steady flow of promotion pursuant to a board convened by the Secretary of the Navy. An officer recommended for elimination from an active status under this provision shall be transferred to the Retired Reserve, if the officer is qualified and applies therefore. If not transferred to the Retired Reserve the officer, at the discretion of the CHNAVPERS or DC/S (M&RA), shall be transferred to the Standby Reserve (Inactive), if qualified, or be Honorably discharged from the Naval or Marine Corps Reserve. Elimination of Reserve officers from an active status to provide a steady flow of promotion shall be accomplished for

the same reasons indicated in paragraph 9 of this enclosure for Selective Early Retirement. The CHNAVPERS or DC/S (M&RA) shall justify the use of this provision in promotion plans submitted to the Secretary of the Navy in accordance with chapter 549 of reference (a) and the provisions of reference (m).

11. Age Restrictions for Reserve Officers

a. Age in Grade Restrictions

(1) A Reserve officer not on active duty who is not on a promotion list will be transferred to the Standby Reserve, Inactive status; or, upon request, be transferred to the Retired Reserve, if qualified, or be honorably discharged from the Naval or Marine Corps Reserve if he or she has completed the obligated service referred to in paragraphs 4a and 4b of enclosure (2) upon attaining the following ages in grade:

Navy LDO-----	60 years
WO/CWO -----	60 years
O-1/O-2 -----	40 years
O-3 -----	46 years
O-4 -----	52 years
O-5 and above ---	60 years

(2) CHNAVPERS or DC/S (M&RA) may grant waivers of the age-in-grade restrictions in paragraph 11a of this enclosure for Reserve officers below the grade of O-5 when approved mobilization requirements cannot be met in the officer's grade, competitive category or military occupational specialty, or when circumstances of an unusual nature as determined on a case-by-case basis, justify a waiver.

21 NOV 1983

b. Retention Beyond Age 60

(1) Except as provided in section 1006 of reference (a), no Reserve officer will be retained in an active status or retained on or recalled to active duty in a retired status beyond 60 years of age. However, a waiver of this age restriction may be authorized by the Secretary of the Navy, upon recommendation of the Chief of Naval Personnel or the Commandant of the Marine Corps, for a volunteer who is medically qualified for active service or retention in an active status, and who has some special qualification or skill for which a military requirement exists and which cannot be met by a Regular or Reserve officer on active duty under age 60 or a Reserve officer in the Ready Reserve under that age. Under no circumstances will a Reserve officer be retained in an active status, or retained on or recalled to active duty in a retired status, solely for the purpose of increasing retired pay or as a reward for long, distinguished service. When service under these strict limitations is rendered after eligibility for retired pay has been achieved, the interest of the Reserve officer shall be protected by ensuring that such service is fully credited to the officer.

(2) Under section 6391 of reference (a), a Reserve officer who has not already been transferred to the Retired Reserve shall be so transferred upon attainment of age 62. However, the Secretary of the Navy upon recommendation of the Chief of Naval Personnel or the Commandant of the Marine Corps, may defer the retirement of any officer in the Naval or Marine Corps Reserve in the grade of O-7 or O-8 until he or she reaches age 64. Not more than 10 officers in the grade of O-7 and O-8 may be so deferred at any one time, distributed between the Naval Reserve and the Marine Corps Reserve as the Secretary deems necessary to meet Navy Department needs.

12. Separation of Reserve officers not on active duty for lack of mobilization potential

a. The Secretary of the Navy shall, when necessary, convene a board to screen Reserve officers not on active duty and who have completed the obligated service referred to in paragraph 4a of enclosure (2), for their potential and availability for mobilization to active duty. Such screening will include, but is not limited to, officers in the following categories:

(1) The officer has been on the Inactive Status List (Standby Reserve) for at least 3 years.

21 NOV 1983

(1) The officer has been on the Inactive Status List (Standby Reserve) for at least 3 years.

(2) The officer has been found by the Commander, Naval Medical Command to be not physically qualified for active duty or retention in the Naval or Marine Corps Reserve. Such officers shall be afforded an opportunity for full and fair hearing before a Physical Evaluation Board prior to final action on their cases.

(3) The officer has been found by the Commander, Naval Medical Command to be militarily unfit or unsuitable as a result of a medical finding not constituting physical disability. Such officers are not entitled to a hearing before a Physical Evaluation Board.

(4) An officer who fails to undergo a physical examination as required by current regulations.

(5) An officer who fails to keep the command or activity to which the officer is attached informed of the officer's current mailing address.

(6) The officer fails to respond to or comply with official correspondence within a reasonable period of time.

(7) An officer who declines to accept a permanent appointment to the next higher grade within six months of approval of the report of the promotion selection board that recommended the officer for promotion.

(8) An officer whose ecclesiastical endorsement has been withdrawn.

(9) An officer who earned less than 27 retirement credit points (including membership points) per anniversary year and for whom no shortage of officers with his or her skill exists in his or her competitive category and grade. However, a Reserve officer may not be separated from the Naval or Marine Corps Reserve solely for failure to meet this standard if training during the anniversary year is denied by reason of lack of funds or facilities to provide appropriate training, or circumstances of an unusual nature, as determined by the board, or by the Chief of Naval Personnel or the Commandant of the Marine Corps on a case-by-case basis preclude the officer from attaining at

least 27 Reserve Retirement Credit Points (including membership points) per anniversary year.

b. Prior to the convening of a board referred to in this paragraph each officer considered will be notified in accordance with paragraph 2 of enclosure (7) of this instruction.

c. Boards to consider Reserve officers for their mobilization potential may be promotion boards reconvened for that purpose or may be convened separately under such regulations as the Chief of Naval Personnel or the Commandant of the Marine Corps may prescribe.

d. The Chief of Naval Personnel or the Commandant of the Marine Corps, upon recommendation of the Board that an officer referred to in this paragraph should be separated for lack of mobilization potential, shall take the following action:

(1) Transfer the officer to the Inactive Status List if the officer is not qualified or does not request transfer to the Retired Reserve; or,

(2) Recommend to the Secretary that the officer be transferred to the Retired Reserve if the officer is qualified and requests such transfer; or,

(3) Recommend to the Secretary that the officer be Honorably discharged from the Naval or Marine Corps Reserve.

13. Release from active duty of Naval Reserve officers on the active duty list by Reason of Retirement Eligibility. Naval Reserve commissioned officers and warrant officers on the active duty list who are eligible to retire with pay under the provisions of any retirement law will be released from active duty with minimum of six months advance notice not later than the first day of the month following the month in which they become eligible to retire unless

a. earlier separation is dictated under any other provisions of this instruction,

b. they officially request retirement in lieu of release from active duty, or

c. they are retained on active duty through the administrative Retention Board.

21 NOV 1983

To obtain retirement benefits, officers must officially request and be approved for retirement. Officers eligible to retire under section 1331 of reference (a) who are retained on active duty must have prior approval of the Secretary in order to receive active status credit in accordance with section 676 of reference (a).

14. Boards authorized by this instruction. Boards that are convened by the Chief of Naval Personnel or the Commandant of the Marine Corps under this instruction shall be convened in accordance with regulations prescribed by the Chief of Naval Personnel or the Commandant of the Marine Corps as appropriate.

15. Secretarial Plenary Authority. Notwithstanding any limitation on separation authority under this instruction, the Secretary of the Navy may direct the processing of any officer after determining that such processing is in the best interest of the naval service.

17 MAR 1993

GUIDELINES ON SEPARATIONS FOR CAUSE

1. Advance Notification. Every commanding officer shall report to CHNAVPERS or DC/S (M&RA), as appropriate, all incidents (including information received through any source; e.g., Naval Investigative Service, Naval Inspector General, etc.) involving any officer whose performance or conduct is such that processing for separation may be appropriate under this instruction.

2. Processing for Separation. CHNAVPERS or DC/S (M&RA) shall initiate processing for separation under the following circumstances:

a. Cases referred to them under paragraph 1, when considered appropriate under this instruction.

b. When they receive information involving officers whose performance or conduct is such that processing is considered appropriate under this instruction.

c. Every officer on the active duty list above the grade of CW0-4 reported to the Secretary of the Navy by a selection board pursuant to references (k), (l), or (m), whose record indicates that the officer should be required to show cause for retention on active duty because of substandard performance of duty, misconduct, moral or professional dereliction, or because his or her retention is clearly inconsistent with the interests of national security.

d. Every Reserve officer not on the active-duty list above the grade of CW0-4 reported to the Secretary of the Navy by a selection board pursuant to chapter 549 of reference (a) and this instruction whose record indicates that the officer should be separated because of substandard performance of duty, misconduct, moral or professional dereliction, or because his or her retention is clearly inconsistent with the interests of national security.

e. Every warrant officer reported to the Secretary of the Navy by a selection board pursuant to references (k), (l), or (n) whose records and/or reports establish, in the opinion of the board, his or her unfitness or unsatisfactory performance in his or her warrant grade or that his or her retention is clearly inconsistent with the interests of national security.

Enclosure (4)

17 MAR 1993

3. Regular Officers

a. Probationary Officers

(1) A probationary officer being considered for separation for substandard performance for one or more of the reasons contained in subparagraph 1a (Substandard Performance of Duty) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation under the Notification Procedure in enclosure (7). Neither a hearing nor a board proceeding is required.

(2) A probationary officer being considered for separation for one or more of the reasons contained in subparagraphs 1b (Misconduct or Moral or Professional Dereliction) or 1c (Retention is not Consistent with the Interests of National Security) of enclosure (3) shall be processed for separation under the Administrative Board Procedures in enclosure (8).

R) (3) In cases where deemed appropriate, a recommendation may be made to the Secretary by the CHNAVPERS or Deputy Chief of Staff for Manpower and Reserve Affairs to separate such a probationary officer with an honorable characterization of service in lieu of processing under the Administrative Board Procedures. This is in addition to the authority to either close a case after initial review, or refer it to a Board of Inquiry. The Secretary may approve the separation and characterization, or reject the recommendation and direct that the case be referred to a Board of Inquiry.

A) (4) Notwithstanding any other provision of this instruction, a probationary officer may, upon approval of the Secretary of the Navy, be discharged when there is a need to reduce the number of officers in either the Navy or the Marine Corps to meet budgetary or force size requirements. The provisions of enclosure (7) do not apply to the discharge of probationary officers under this authority. This authority will be exercised per procedures established by CHNAVPERS and DC/S (M&RA) and submitted for approval to the Secretary of the Navy prior to implementation.

21 NOV 1983

(5) The Secretary of the Navy may refer any case which he considers appropriate to a Board of Inquiry.

b. Nonprobationary officers. Nonprobationary officers being considered for separation for one or more of the reasons contained in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation in accordance with the Administrative Board Procedures in enclosure (8).

4. Reserve Officers

a. Reserve officers with less than three years of commissioned service and Reserve warrant officers with less than three years of service as a warrant officer may be separated from the Naval or Marine Corps Reserve at any time without the benefit of a hearing or board procedure for any reason discussed in paragraphs 1a (Substandard Performance) or 6 (Parenthood) of enclosure (3). The Notification Procedure contained in enclosure (7) shall be used.

b. Reserve officers and Reserve warrant officers, regardless of length of commissioned service or service as a warrant officer, may be separated from the Naval or Marine Corps Reserve at any time without the requirement of a hearing or board procedure for any reason discussed in paragraphs 11 (Age Restrictions) or 12 (Lack of Mobilization Potential) of enclosure (3). The Notification Procedure contained in enclosure (7) shall be used.

c. Reserve officers with more than three years of commissioned service and Reserve warrant officers with more than three years of service as a warrant officer may be separated for any reason discussed in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3) only upon recommendation of a Board of Inquiry as provided in enclosure (8).

d. Reserve officers and Reserve warrant officers, regardless of length of commissioned service or service as a warrant officer, being considered for separation for any reason discussed in paragraphs 1b (Misconduct, or Moral or Professional Dereliction) or 1c (Retention is not Consistent with Interests of National Security) of enclosure (3) may be separated only upon recommendation of a Board of Inquiry as provided in enclosure (8).

SECNAVINST 1920.6A
21 NOV 1983

e. Reserve warrant officers who are not eligible for retirement may apply for enlistment in the highest enlisted grade previously held if Honorably discharged because of any reason contained in paragraph 1a (Substandard Performance of Duty) of enclosure (3).

5. Limited Duty Officers and Warrant Officers with Temporary Promotions or Appointments. As prescribed by section 5596 of reference (a), the Secretary may at any time terminate the temporary promotion or appointment of a limited duty officer or warrant officer of the naval service, without the requirement for a hearing or a board of officers. The Notification Procedure of enclosure (7) shall be used. As provided by law, an individual whose temporary appointment is terminated reverts to his or her permanent status as a warrant officer or enlisted member. The provisions of this instruction apply to the administrative processing of an individual who reverts to warrant officer status. The provisions of SECNAVINST 1910.4 (NOTAL) apply to the administrative processing of an individual who reverts to enlisted status.

6. Permanent Regular Warrant Officers

a. Permanent Regular warrant officers who, from the date when they accepted their original permanent appointments as warrant officers in that component, have not completed three years of continuous active service may, pursuant to section 1165 of reference (a), have their appointments terminated at any time without the requirement of a hearing or board proceedings if the basis for such termination is contained in paragraph 1a (Substandard Performance of Duty) or 6 (Parenthood) of enclosure (3). For purposes of this instruction, the term "unsatisfactory performance," as provided in sections 560, 1165, and 1166 of reference (a) is equivalent to substandard performance of duty as defined in enclosure (3) of this instruction. The Notification Procedure of enclosure (7) shall be used.

b. Permanent Regular warrant officers who have completed three or more years of continuous active service from the date when they accepted their original permanent appointments as warrant officers may have their appointments terminated because of any reason contained in paragraphs 1a (Substandard Performance of Duty) or 6 (Parenthood) of enclosure (3) only upon recommendation by a Board of Inquiry as provided in enclosure (8).

21 NOV 1983

c. Permanent Regular warrant officers who are being considered for termination of appointment or separation because of any reason contained in paragraphs 1b (Misconduct, or Moral, or Professional Dereliction, including unfitness on the part of a warrant officer) or 1c (Retention is not consistent with the Interests of National Security) of enclosure (3) may be separated or their appointments terminated, as appropriate, under sections 1165 or 1166 of reference (a) if recommended for separation or termination by a Board of Inquiry as provided in enclosure (8). The statutory basis for termination or separation because of unfitness as provided in sections 560, 1165, and 1166 of reference (a) is the same as misconduct, moral or professional dereliction or retention not being in the interests of national security as defined in enclosure (3) of this instruction.

d. A permanent Regular warrant officer, who is not eligible for retirement, may apply for enlistment in the highest enlisted grade previously held pursuant to section 515 of reference (a) if Honorably discharged because of any reason contained in paragraph 1a (Substandard Performance of Duty) of enclosure (3). A permanent Regular warrant officer with three or more years of continuous active service from the date of acceptance of original permanent appointment who is identified by a promotion selection board as being unfit or unsatisfactory in the performance of duty shall be afforded the opportunity to appear before a Board of Inquiry prior to separation or termination of appointment.

7. Retention to Fulfill Statutory Service Obligation

a. At the discretion of the Secretary of the Navy, a Regular officer who has not fulfilled the statutory obligation referred to in paragraph 4a of enclosure (2), and who is Honorably discharged from the Regular component by the Secretary for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6 (Parenthood) of enclosure (3), may be tendered a Reserve commission and transferred to the Ready Reserve to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

b. At the discretion of the Secretary of the Navy, a Reserve officer on active duty or in an active status not on active duty who has not completed the statutory obligation referred to in paragraph 4a of enclosure (2), and who would

21 NOV 1983

otherwise be Honorably discharged from the Naval or Marine Corps Reserve by the Secretary for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6 (Parenthood) of enclosure (3), may be released from active duty and transferred to the Ready Reserve or be retained in the Ready Reserve if not on active duty, to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

c. To assist the Secretary of the Navy in deciding whether the action referred to in paragraph 7a or 7b should be taken, the Chief of Naval Personnel or the Commandant of the Marine Corps shall include in the endorsement to the Secretary under the provisions of enclosure (7) or enclosure (8) an assessment of the officer's potential for future mobilization.

8. Dropping from the Rolls

a. Under sections 1161, 1163 and 6408 of reference (a), the President or the Secretary of the Navy, depending upon the applicable statute, may drop from the rolls of an Armed Force a Regular or Reserve officer who:

(1) has been absent without authority for at least three months, or

(2) has been sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

b. Action to initiate dropping an officer from the rolls shall normally be undertaken by the Chief of Naval Personnel or the Commandant of the Marine Corps, on a case-by-case basis, after a finding that one or both of the above conditions exist, and that the return of the officer to military control for processing for separation for cause under this instruction will serve no useful purpose.

(1) Dropping from the rolls of officers of Regular components or Reserve officers of flag or general rank will be accomplished by action of the President.

(2) Dropping from the rolls of officers of Reserve components, other than officers of flag grade, will be accomplished by action of the Secretary.

21 NOV 1983

c. Neither a hearing nor a Board is required in order to drop an officer from the rolls. However, the officer so considered shall be notified of such prospective adverse action (or reasonable efforts shall be made to provide such notification if actual notification cannot be made) and provided the opportunity to respond within 30 days of receipt of notification. Upon completion of the dropping from the rolls action, notification will be addressed to the officer concerned. No certificate of discharge is issued upon separation by dropping from the rolls since such service is not characterized. For purpose of any Federal benefit based upon characterization of service, dropping from the rolls shall be considered as a discharge under Other Than Honorable conditions. Except for members who are absent without authority, members who are entitled to retired pay may not be dropped from the rolls unless they are ineligible to receive their retired pay under authority of subchapter II, chapter 83, Title 5, United States Code.

9. Special Provisions

a. No officer shall be discharged under Other Than Honorable conditions, pursuant to this instruction, without first being afforded the opportunity to have his or her case heard before a Board of Inquiry.

b. If proceedings by a Board of Inquiry are mandatory in order to release an officer from active duty or discharge, such action will not be taken except upon the approved recommendation of such a board.

10. Limitations

a. Subject to subparagraph 10c, an officer who is processed for separation because of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) or Parenthood (paragraph 6 of enclosure (3)) and who is determined to have established that he or she should be retained on active duty may not again be processed for separation for the same reasons within the one-year period beginning on the date of that determination.

b. Subject to subparagraph 10c, an officer who is processed for separation for Misconduct, Moral, or Professional Dereliction (subparagraph 1b of enclosure (3)) or in the Interest of National Security (subparagraph 1c of enclosure (3)) and who is determined to have established that he or she should

21 NOV 1983

be retained on active duty may again be required to show cause for retention at any time.

c. An officer may not again be processed for separation under subparagraphs 10a or b solely because of performance or conduct which was the subject of previous proceedings, unless the findings and recommendations of the board that considered the case are determined to have been obtained by fraud or collusion.

d. Whenever evidence of preservice misconduct is presented to a board, the board may consider it only for the purpose of deciding whether to recommend separation or retention of the respondent. Such evidence shall not be used in determining the recommendation for characterization of service. The board shall affirmatively state in its report that such evidence was considered only for purposes of determining whether it should recommend retention or separation of the officer.

e. Performance or conduct identified more than five years prior to the initiation of processing for separation under paragraph 2 of this enclosure shall not form the basis for processing under this enclosure.

11. Final Disposition of Cases processed under Board procedures. Final action in any case wherein the commission or warrant of an officer is to be terminated or discharged pursuant to board action shall be taken by the Secretary. In addition to directing retention on active duty the Secretary may take the following actions:

a. Retirement and Resignation. Any officer (Regular or Reserve, Temporary or Permanent) who is being considered for removal from active duty in accordance with this instruction who is eligible for voluntary retirement under any provision of law on the date of such removal, may, upon approval by the Secretary, be retired in the highest grade in which he or she served satisfactorily as determined by the Secretary under the guidelines of enclosure (6). Such a retirement is considered voluntary for purposes of determination of the officer's retirement. An officer who is not eligible for retirement may submit a qualified or unqualified resignation or a resignation for the good of the service. Eligibility for retirement pay of officers convicted by a court other than a court-martial or other military court shall be determined in accordance with subchapter II, chapter 83, Title 5, United States Code.

21 NOV 1983

(1) Requests for such resignations and retirement shall be addressed to the Secretary of the Navy, via the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(2) The Chief of Naval Personnel or the Commandant of the Marine Corps shall, unless the request is denied, submit the request to the Secretary with the case file and recommendations. The Chief of Naval Personnel and the Commandant of the Marine Corps shall normally deny, on behalf of the Secretary, such resignations and requests for retirement while actions against the officer under the UCMJ are pending.

(3) Unless the requested characterization of service is consistent with the guidelines contained in enclosure (5) of this instruction, such resignations will normally be denied.

(4) Pursuant to Section 6329 of reference (a), no officer of the Navy or Marine Corps may be retired because of misconduct where trial by court-martial would be appropriate.

(5) A request for resignation or retirement has no effect unless accepted or approved by the Secretary of the Navy.

(6) When the Chief of Naval Personnel or the Commandant of the Marine Corps, as applicable, determines that conduct which could be the subject of separation under paragraphs 1b (Misconduct, or Moral or Professional Dereliction) or c (Retention is not Consistent with the Interests of National Security) of enclosure (3) of a retirement-eligible officer who has either requested retirement or is to be retired in accordance with this provision, might warrant an Other Than Honorable discharge (see enclosure (5) guidelines), were the officer not retirement eligible, the issue is raised as to whether the officer has served satisfactorily in the grade currently held. Unless the case is already before a Board of Inquiry, the officer's record, including all applicable information, shall be forwarded directly to a Board of Inquiry for a recommendation of whether the officer should be retired in the grade currently held, or in the next inferior grade, following the guidelines of enclosure (6). The procedure for such a board is described in enclosure (8). All requests for retirement submitted by officers who have been convicted at general court-martial shall be referred to a Board of Inquiry. All recommendations from the Board of Inquiry shall be forwarded

21 NOV 1983

to the Secretary via the Chief of Naval Personnel or Commandant of the Marine Corps, as applicable.

b. Discharge. Any officer (Regular or Reserve, Temporary or Permanent) discharged for cause in accordance with this enclosure, if ineligible for voluntary retirement under any provision of law on the date of such removal, shall, at the direction of the Secretary, be:

(1) Honorably discharged in the grade then held when the only basis for discharge is Substandard Performance of Duty under subparagraph 1a of enclosure (3), or Parenthood (paragraph 6 of enclosure (3)).

(2) Discharged with an appropriately characterized discharge under guidelines in enclosure (5) when the grounds for discharge is Misconduct, Moral, or Professional Dereliction or because Retention is not in the best Interests of National Security under subparagraphs 1b or 1c of enclosure (3).

c. The Secretary may retain the officer under the provisions of paragraph 7 of this enclosure.

21 NOV 1983

GUIDELINES ON CHARACTERIZATION OF SERVICE

1. General Guidance. Characterization of service incident to separation for cause will be based on the officer's record of performance and conduct including particularly the acts or omissions giving rise to separation for cause.

a. When the separation is solely for reasons constituting substandard performance of duty or solely for removal of ecclesiastical endorsement the characterization must be Honorable.

b. The serious nature of misconduct and moral or professional dereliction on the part of a commissioned officer requires that the separation normally be under Other Than Honorable conditions. However, characterization as General may be warranted under the guidelines below. Characterization as Honorable is not authorized unless the officer's record is otherwise so meritorious that under the particular circumstances any other characterization would be clearly inappropriate.

c. When separation is for reasons of national security the characterization should be based on the seriousness of the acts or omissions and the guidelines below.

2. Characterization of Service

a. Honorable. An officer whose quality of service has generally met the standards of acceptable conduct and performance of duty for officers of the naval service, or is otherwise so meritorious that any other characterization would be clearly inappropriate shall have his or her service characterized as Honorable.

b. General (Under Honorable Conditions). If an officer's service has been honest and faithful, it is appropriate to characterize that service under Honorable conditions. Characterization of service as General (Under Honorable Conditions) is warranted when significant negative aspects of the officer's conduct or performance of duty outweigh positive aspects of the officer's military record.

c. Other Than Honorable. This characterization is appropriate when the officer's conduct or performance of duty, particularly the acts or omissions that give rise to reasons for

Enclosure (5)

21 NOV 1983

separation, constitute a significant departure from that required of an officer of the naval service. Examples of such conduct or performance include acts or omissions which under military law are punishable by confinement for six months or more; abuse of a special position of trust; an act or acts which bring discredit upon the armed services; disregard by a superior of customary superior-subordinate relationships; acts or omissions that adversely affect the ability of the military unit or the organization to maintain discipline, good order and morale or endanger the security of the United States or the health and welfare of other members of the Armed Forces; and deliberate acts or omissions that seriously endanger the capability, security, or safety of the military unit or health and safety of other persons.

d. Limitations

(1) Service will be characterized as Honorable when the grounds for separation are based solely on preservice activities.

(2) Service will be characterized as Honorable when the sole reason for discharge is personal abuse of drugs, as defined in reference (f), and the evidence of the unlawful drug involvement is developed as a result of the officer's volunteering for treatment under a self-referral program for treatment of drug abuse in accordance with reference (f).

(3) Conduct in the civilian community of a member of a Reserve component who is not on active duty or on active duty for training and was not wearing the military uniform at the time of such conduct giving rise to separation may form the basis for characterization of service as Other Than Honorable only if the conduct directly affects the performance of military duties and the conduct has an adverse impact on the overall effectiveness of the service, including military morale and efficiency.

e. Service will be characterized as Honorable or General, consistent with the guidance in paragraphs 1 and 2 when the sole basis for separation is homosexuality, unless aggravated acts are included in the findings. A separation under Other Than Honorable conditions may be issued if there is finding that the officer attempted, solicited, or committed a homosexual act:

(1) By using force, coercion, or intimidation;

21 NOV 1983

- (2) With a person under 16 years of age;
- (3) With a subordinate in circumstances that violate customary military superior-subordinate relationships;
- (4) Openly in public view;
- (5) For compensation;
- (6) Aboard a military vessel or aircraft; or
- (7) In another location subject to military control, under aggravating circumstances noted in the finding, that have an adverse impact on discipline, good order or morale comparable to the impact of such activity aboard a vessel or aircraft.

21 NOV 1983

Guidelines on Recommendations
Grade at Retirement

1. Satisfactory Service in the Grade Currently Held.

Officers who retire from the naval service may be retired in the highest grade in which they served on active duty satisfactorily, as determined by the Secretary. To assist in this determination, a Board of Inquiry shall be tasked, in accordance with enclosure (8), to recommend whether an officer has served satisfactorily in the grade currently held for not less than six months, and whether the officer should be retired in that or the next inferior grade.

a. General Guidance. A recommendation that an officer has or has not served satisfactorily in the grade currently held should be based on a determination made after considering all relevant factors, such as the nature of the misconduct and its effect on professional performance. Such determination shall be supported by the record before the Board of Inquiry. The Board should recommend retirement in the next inferior grade if it determines that the officer's misconduct was serious enough to warrant an Other Than Honorable discharge, but for his or her retirement eligibility and his or her overall performance in grade was so far overshadowed by his or her misconduct that it should be characterized as unsatisfactory. However, when the officer's record, in spite of the misconduct, is otherwise so meritorious as to demonstrate that the officer served satisfactorily in the grade currently held, the recommendation should be for retirement in that grade.

b. Specific Factors. In considering whether an officer served satisfactorily in the current grade held, the following factors should normally be considered:

(1) Nature and severity of the misconduct.

(2) The misconduct and its relation to, and effect on the performance of military duties.

(3) All fitness reports and other portions of the service record which reflect performance in the current grade. In this regard it is appropriate to consider whether the misconduct was known by reporting seniors, and if not, what effect, if any, it might have had on the officer's record.

Enclosure (6)

SECNAVINST 1920.6A
21 NOV 1983

(4) Time in current grade, and relation between such time and the time of misconduct.

(5) Other relevant matters presented either by the record or the officer.

Enclosure (6)

17 MAR 1993

NOTIFICATION PROCEDURE

1. The following Notification Procedure shall be used when:

a. A probationary Regular officer or Reserve officer above CWO-4 with fewer than 3 years of commissioned service, or a permanent Regular or Reserve warrant officer with fewer than 3 years of service as a warrant officer is processed for separation for any reason specified in paragraphs 1a (Substandard Performance) or 6 (Parenthood) of enclosure (3).

b. Action is taken to terminate the appointment of a Ytemporary limited duty officer or warrant officer for any reason specified in paragraphs 1 (Separation for Cause), or 6 (Parenthood) of enclosure (3).

c. An officer is processed for separation for any reason specified in paragraphs 1b (Misconduct, or Moral, or Professional Dereliction), 1c (Retention is not Consistent with the Interests of National Security), or 6 (Parenthood) of enclosure (3) and a separation with an Honorable or General characterization of service is recommended by the CHNAVPERS or Deputy Chief of Staff for Manpower and Reserve Affairs under the provisions of paragraph 3a(3) of enclosure (4). (R)

d. Action is taken to remove a Reserve officer from an active status under the provisions of paragraph 12 of enclosure (3).

e. Action is taken to process a regular or Reserve officer for separation for the reason specified in paragraph 5 (Failure to Accept Appointment to O-2) of enclosure (3).

2. Notification by Commanding Officer. The commanding officer shall notify the officer in writing of the following:

a. The reason or reasons specified in enclosure (3) for which the action was initiated, including the specific factual basis supporting the reason.

b. The recommended characterization of service is Honorable or General if such a recommendation originated with CHNAVPERS or Deputy Chief of Staff for Manpower and Reserve Affairs per subparagraph 3a(3) of enclosure (4). (R)

c. That the officer may submit a rebuttal or decline to make a statement.

Enclosure (7)

21 NOV 1983

d. That the officer may tender a resignation in lieu of separation processing in accordance with subparagraph 11a of enclosure (4).

e. That the officer has the right to confer with appointed counsel as provided in paragraph 3 of this enclosure.

f. That the officer will, upon request, be provided copies of the papers to be forwarded to the Secretary to support the proposed separation. Classified documents may be summarized.

g. That the officer has the right to waive subparagraphs c, d, e, and f, above, and that failure to respond shall constitute waiver of the rights in these subparagraphs.

h. That the officer has a specified period of time to respond to the notification as provided in paragraph 4.

3. Right to Counsel

a. A respondent has the right to consult with qualified counsel when the Notification Procedure is initiated, except under the following circumstances:

(1) The respondent is attached to a vessel or unit operating away from or deployed outside the United States or away from its overseas home port, or to a shore activity remote from Judge Advocate resources;

(2) No qualified counsel is assigned and present at the vessel, unit, or activity;

(3) The commanding officer does not anticipate having access to qualified counsel from another vessel, unit, or activity, for at least the next five days; and

(4) The commanding officer determines that the needs of the naval service require processing before qualified counsel will be available.

b. Nonlawyer counsel shall be appointed whenever qualified counsel is not available under paragraph 3a. An appointed nonlawyer counsel shall be a commissioned officer with no prior involvement in the circumstances leading to the basis of the

17 MAR 1993

proposed separation, and no involvement in the separation process itself. The nonlawyer counsel shall be encouraged to seek advice by telephone or other means from any judge advocate on any legal issue relevant to the case whenever practicable. When a nonlawyer counsel is appointed, the appointing letter shall state that qualified counsel is unavailable for the applicable reasons in paragraph 3a of this enclosure and that the needs of the naval service warrant processing before qualified counsel will be available; a copy of the appointing letter will be attached to each copy of the written notice of separation processing. The respondent may also consult with a civilian counsel at the respondent's own expense. Respondent's use of a civilian counsel does not eliminate the requirement to furnish counsel in paragraph 3a or 3b of this enclosure. Consultation with civilian counsel shall not delay orderly processing per this instruction.

4. Response

a. The respondent shall be provided a reasonable period of time, normally 5 working days, but more if in the judgment of the commanding officer additional time is necessary, to act on the notice. An extension may be granted by the commanding officer upon a timely showing of good cause by the officer.

b. If notice by mail is authorized under enclosure (3) of this instruction and the respondent fails to acknowledge receipt or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

c. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made in the case file. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate notification statement, the selection of rights will be noted and notation as to the failure to sign will be made.

5. Submission to the Secretary

a. The commanding officer shall forward the case file to the Secretary via the CHNAVPERS or DC/S (M&RA), as appropriate. The case file shall contain a copy of the written notification to the respondent, documentation substantiating the conduct or performance, and any written statement which the respondent

17 MAR 1993

desires to make. If the respondent tenders a resignation, it shall accompany the case file.

b. CHNAVPERS or DC/S (M&RA) shall forward the case file to the Secretary with recommendations on each reason for separation and the facts supporting it, the recommendation for separation, and a recommendation for acceptance or rejection of a resignation, if one is tendered.

c. CHNAVPERS or DC/S (M&RA) may disapprove the separation of probationary officers when the reasons for separation are solely in the category of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) and there is not sufficient evidence to support one or more of those reasons.

6. Action of the Secretary

a. The Secretary shall determine whether there is sufficient evidence supporting the allegations set forth in the notification for each of the reasons for separation.

b. If there is sufficient factual basis for separation, the Secretary may order the officer separated. If the officer tenders a resignation, the Secretary may accept or reject it.

R) c. If the Secretary determines that the recommended Honorable or General characterization of service is inappropriate, he may refer the case directly to a Board of Inquiry.

d. The Secretary may retain the officer under the provisions of paragraph 7 of enclosure (4).

17 MAR 1993

ADMINISTRATIVE BOARD PROCEDURES1. SHOW CAUSE AUTHORITYa. Purpose

(R)

(1) The purpose of a Show Cause Authority is to review and evaluate the record of any regular commissioned officer (other than a warrant officer, retired officer, or temporary limited duty officer) to determine whether the officers should be required because of substandard performance of duty, misconduct, professional or moral dereliction, or because their retention is not clearly consistent with the interest of national security, to show cause for their retention on active duty.

(2) The Show Cause Authority shall review and evaluate the records of officers referred under paragraph 2 of enclosure (4) or referred by the Secretary. In cases where processing is directed by the Secretary under paragraph 6c of enclosure (7), the Show Cause Authority shall direct that a Board of Inquiry be convened.

b. Decision and Findings of the Show Cause Authority. The Show Cause Authority will review and evaluate the record of the officer concerned and shall:

(R)

(1) Determine that the record contains sufficient information as to one or more of the reasons specified in this instruction to require the officer to show cause for retention before a Board of Inquiry.

(a) Cases supported by a preponderance of the evidence that involve unlawful drug involvement or homosexual conduct with one or more of the circumstances listed in subparagraph 1b(3) of enclosure (3) shall be referred to a Board of Inquiry.

(b) No recommended characterization of service shall be made except when appropriate under paragraph 1b(3) of this enclosure.

(2) Determine that the record does not contain sufficient information to require the officer concerned to show cause for retention or to warrant referral to a Board of Inquiry and, therefore, close the case.

(3) Determine that, in the case of a probationary officer, the record supports separation but the circumstances

Enclosure (8)

17 MAR 1993

warrant characterization of honorable or general per enclosure (5) (Guidelines on Characterization of Service).

R) c. Action After Show Cause Authority Findings

(1) If the Show Cause Authority closes the case, all proceedings shall cease.

(2) If the Show Cause Authority determines that referral of the case to a Board of Inquiry is appropriate, the Show Cause Authority shall convene, or direct to be convened, a Board of Inquiry under this enclosure. A statement of the reason for making such a determination shall be provided to the officer in writing.

(3) If the Show Cause Authority recommends that a probationary officer be separated with an Honorable or General discharge, the Show Cause Authority shall initiate or direct the initiation of the notification procedure outlined in enclosure (7).

2. BOARD OF INQUIRY

a. Purpose. The purpose of a Board of Inquiry is to give the officer a full and impartial hearing at which he or she may respond to and rebut the allegations which form the basis for separation for cause and/or retirement in a paygrade inferior to that currently held and present matters favorable to his or her case on the issues of separation and or characterization of service.

b. Convening Authority. The Show Cause Authority shall convene, or direct to be convened, a Board of Inquiry upon determination that an officer should be required to show cause for retention. A Board of Inquiry shall also be convened by such authority when required under the provisions of enclosure (3) or (4), or when the Show Cause Authority determines that a retiring officer has committed misconduct so serious as to possibly warrant an Other Than Honorable discharge, were the officer not retirement eligible. In such case the Board of Inquiry shall recommend, based on guidelines provided in enclosure (6), whether the officer has served satisfactorily in the grade currently held, or whether he or she should be retired in the next inferior grade.

17 MAR 1993

c. Active Duty Orders and Expenses. In no case shall the affording of a hearing to an officer, who is not otherwise on active duty at the time, place the officer on or return the officer to active duty. There is no authority for the issuance of any form of initial orders to active duty for the sole purpose of facilitating appearance by an officer for a hearing. There is no authority for the payment, or reimbursement of any expenses which may be incurred by an officer, or by any person in his or her behalf, in connection with any administrative separation proceeding under these regulations.

d. Membership, Recorder, Legal Advisor. Boards of Inquiry shall consist of not less than three officers in the same Armed Force as the respondent.

(1) In the case of regular commissioned officers other than temporary limited duty officers and warrant officers, members shall be highly qualified and experienced officers in the grade of O-6 or above and senior in grade to the respondent. They shall be regular officers on the active duty list.

(2) In the case of Reserve, temporary limited duty and warrant officers, the members comprising the board shall be senior to the respondent unless otherwise directed by the Secretary. If the respondent is a Reserve officer, at least one member of the board shall be a Reserve officer, unless otherwise directed by the Secretary.

(3) At least one member shall be an unrestricted line officer. Such officer will have command experience, whenever possible. One member shall be in the same competitive category as the respondent. However, if the respondent's competitive category does not contain officers in the paygrade of O-6 or above, an O-6 from a closely related designator shall be used to satisfy this membership requirement. If there is not a designator closely related to that of the respondent, then an unrestricted line officer shall be used. CHNAVPERS or DC/S (M&RA) may waive each of these requirements on a case-by-case basis when compliance would result in undue delay. The purpose of these representation requirements is not to serve the interest of any specific group, but to increase the knowledge and experience of the board as a whole.

(4) The convening authority is not limited to officers under his or her direct command in selecting qualified officers to sit on a Board of Inquiry.

17 MAR 1993

(5) When sufficient highly qualified and experienced active duty officers are not available, the convening authority shall complete Board membership with available retired officers who meet the criteria of paragraph 2d(1) and (2) above other than the active duty list requirement, and who have been retired for fewer than 2 years.

(6) Officers with personal knowledge pertaining to the particular case shall not be appointed to the Board considering the case. No officer may be a member of more than one board convened under this instruction to consider the same officer.

(7) The senior member shall be the Presiding Officer, and rule on all matters of procedure and evidence, but may be overruled by a majority of the Board. If appointed, the legal advisor shall rule finally on all matters of procedure, evidence and challenges except challenges to himself or herself. The convening authority will rule finally on all challenges for cause on the legal advisor.

(8) The Convening Authority shall appoint a nonvoting Recorder to perform such duties as appropriate. The recorder shall not participate in closed sessions of the Board.

(9) The Convening Authority may appoint a nonvoting Legal Advisor to perform such duties as the Board desires. The legal advisor shall not participate in closed sessions of the Board.

e. Notice to Respondent. The respondent shall be notified in writing at least 30 days before the hearing of his or her case by a Board of Inquiry, of each of the reasons for which he or she is being required to show cause for retention in the naval service, the least favorable characterization of service which may be recommended by the Board of Inquiry, and of the rights of a respondent. When the Board of Inquiry is required in the case of a retirement eligible officer, to consider whether to recommend that the respondent be retired in the grade next inferior to that currently held, the respondent shall be informed of all reasons therefore, and the right to present evidence that his or her service, in the grade currently held, has been satisfactory.

f. Rights of a Respondent. The respondent shall be given the following rights, which may be exercised or waived:

17 MAR 1993

(1) Reasonable additional time, as determined necessary by the Board of Inquiry, to prepare his or her case. In addition to the 30 days provided in paragraph 2e, the respondent may, for good cause, further petition the convening authority in a timely manner, for a continuance.

(2) The right to counsel, as provided in paragraph 2g.

(3) The opportunity to present matters in his or her own behalf. If suspected of an offense, the officer should be warned against self-incrimination under Article 31, UCMJ, before testifying as a witness. Failure to warn the officer shall not preclude consideration of the testimony of the officer by the Board of Inquiry.

(4) Full access to, and copies of, records relevant to the case, except that information or material shall be withheld if the CHNAVPERS or DC/S (M&RA) determines that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent that the interests of national security permit.

(5) The names of all witnesses in advance of Board of Inquiry proceedings. Failure to provide any information or the name of a witness shall not preclude the board from considering the information or hearing the witness, provided the respondent has had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board of Inquiry.

(6) The right to challenge any member for cause. The respondent may submit to the convening authority for appropriate action, any relevant matter which, in his or her view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the convening authority or the legal advisor to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in the membership of the Board falling below the number required in paragraph 2d of this enclosure, the convening authority shall appoint a new member who is qualified per that paragraph. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

(7) The right to request from the convening authority or the Board of Inquiry the appearance before the board of any witness whose testimony is considered to be pertinent to the case, as provided in paragraph 2i.

17 MAR 1993

(8) The right to submit, at any time before the board convenes or during the proceedings, any matter from the respondent's service record, letter answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(9) The respondent and counsel may question any witness who appears before the Board of Inquiry. Testimony of witnesses shall be under oath or affirmation.

(10) The right to give sworn or unsworn testimony. The respondent may only be examined on sworn testimony. The respondent should be warned against self-incrimination as required by Article 31, UCMJ. Failure to so warn the respondent shall not preclude consideration of the testimony by the Board of Inquiry.

(11) The respondent or counsel may present argument on the matter to the Board.

(12) The respondent shall be provided with a copy of the record of the proceedings in the case and a copy of the findings and recommendations of the Board. In cases involving classified matter withheld in the interests of national security, any record or information to be provided the respondent will be edited prior to delivery to him or her to remove classified material and preserve its integrity.

(13) The respondent may submit a statement in rebuttal to the findings and recommendations of the Board of Inquiry for consideration for the Board of Review.

(14) The respondent may appear in person, with or without counsel, at all open proceedings of the Board.

(15) Failure of the respondent to invoke any of these rights shall not be considered as a bar to the Board of Inquiry proceedings, findings, or recommendations.

g. Counsel

(1) Respondent is entitled to have appointed as counsel by the convening authority, a lawyer certified per Article 27(b)(1), UCMJ.

17 MAR 1993

(2) Respondent may request military counsel of his or her choice provided the requested counsel is reasonably available.

(3) The determination as to whether individual counsel is reasonably available shall be made per the procedures set forth in section 0131 of JAGINST 5800.7C, "Manual of the Judge Advocate General" for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondent must elect between representation by appointed counsel and representation by individual counsel. A respondent may be represented in these proceedings by both appointed counsel and individual counsel only if the convening authority, in his or her sole discretion, approves a written request from the respondent for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing.

(4) Respondent may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel.

h. Waiver. Respondent may waive any of the aforementioned rights before the Board of Inquiry convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraph 2f of this enclosure.

i. Witnesses

(1) Witnesses whose testimony will add materially to respondent's case shall be invited to appear to offer testimony before the Board of Inquiry if such witnesses are reasonably available.

(2) Witnesses not within the immediate geographical area of the board are considered not being reasonably available, except as provided for in subparagraph (4).

(3) Statements or depositions shall be admitted and considered by Boards of Inquiry from witnesses not reasonably available to testify during a board proceeding.

17 MAR 1993

(4) The convening authority shall request that a commanding officer make available for personal appearance before a Board of Inquiry active duty or civilian witnesses under his or her jurisdiction whose personal appearance is essential to a fair determination, but who:

(a) are not reasonably available to testify, or;

(b) decline an invitation to testify before a board.

(5) Respondent will specify in his or her request for witnesses to the convening authority or, once proceedings have commenced, the Board of Inquiry, the type of information the witness is expected to provide. Such a request shall contain the following matter:

(a) A synopsis of the testimony that the witness is expected to give.

(b) An explanation of the relevance of such testimony to the issues of separation or characterization.

(c) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

(6) Requests for witnesses may be denied if not requested in a timely manner.

(7) Witnesses on active duty must appear voluntarily and at no expense to the government, except as provided for by subparagraph (9).

(8) All final decisions on the appearance of witnesses shall be made by the convening authority.

(9) If the convening authority determines that the personal appearance of a witness is necessary, he or she will authorize expenditure of funds for production of the witness only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) advises that:

(a) The testimony of a witness is not cumulative;

(b) The personal appearance of a witness is essential to a fair determination on the issues of separation or characterization;

17 MAR 1993

(c) Written or recorded testimony will not accomplish adequately the same objective;

(d) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and the significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(10) If it is determined that the personal testimony of a witness is required, the hearing will be postponed or continued, if necessary, to permit the attendance of the witness.

(11) The hearing shall be postponed or continued to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(a) When the presiding officer determines that the personal testimony of the witness is not required;

(b) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing; or

(c) When a civilian witness declines to attend the hearing.

j. Hearing. Hearings by Boards of Inquiry must be conducted in a fair and impartial manner to ensure that the respondent has the opportunity to present his or her case.

(1) Boards of Inquiry are not courts-martial and the rules of evidence do not apply.

(2) Oral or written matter not admissible in a court of law may be accepted by Boards of Inquiry.

(3) Oral or written matter presented may be subject to reasonable restrictions as to authenticity, relevance,

17 MAR 1993

materiality, and competency as determined by the Board of Inquiry.

k. Decision of Board of Inquiry. The board will make the following determination, by majority vote, based on the evidence presented at the hearing.

(1) A finding on each of the reasons for separation specified, based on a preponderance of the evidence, and

(2) One of the following:

(a) The respondent is recommended for separation from the naval service for the specific reason or reasons provided in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) supported by a preponderance of the evidence, and that the case is referred to the Board of Review. Based on those reasons, the evidence presented, the overall record of service, and consistent with enclosure (5), a certain characterization of service is recommended.

(b) None of the reasons specified are supported by sufficient evidence presented to warrant separation for cause and the case is, therefore, closed.

(3) The board shall recommend separation for misconduct by reason of unlawful drug involvement if it finds that a preponderance of the evidence supports that finding under subparagraph 1b(2) of enclosure (3).

(4) The board shall recommend separation for misconduct by reason of homosexual conduct if it finds that one or more of the circumstances requiring separation under subparagraph 1b(3) of enclosure (3) is supported by a preponderance of the evidence.

(5) When an officer's voluntary retirement request has been forwarded directly to a Board of Inquiry by the CHNAVPERs or DC/S (M&RA), or a retirement eligible officer has failed to show cause for retention, the Board of Inquiry shall make one of the following findings and recommendations:

(a) The misconduct of the officer was not so serious as to warrant separation under Other Than Honorable conditions, were the officer not retirement eligible. Recommend retirement in the grade currently held.

(b) The misconduct of the officer was so serious as

to warrant separation under Other Than Honorable conditions, were the officer not retirement eligible, but the officer's record is otherwise so meritorious as to demonstrate that the officer has served satisfactorily in the current grade held for no fewer than 6 months. Recommend retirement in the grade currently held.

(c) The misconduct of the officer was so serious as to warrant separation under Other Than Honorable conditions, were the officer not retirement eligible, and the officer's record is not otherwise so meritorious as to demonstrate that the officer has served satisfactorily in the current grade held for not less than 6 months. Recommend retirement in the grade next inferior to that currently held.

1. Record of Procedures. The Board shall make a separate report for each respondent.

(1) Each report shall include a transcript of the Board's proceedings. In the case of regular commissioned officers the transcript shall be in verbatim form. In the case of all other officers and warrant officers, and when the Board determines that the case shall be closed under subparagraph 2k(2)(b), the transcript shall be a summary record unless a verbatim record is directed by the convening authority. The verbatim and summarized transcripts shall show the basis for the Board's determinations and recommendations, and shall be provided to the respondent or counsel for examination prior to signature by the Board members. The respondent or counsel shall provide, for inclusion in the record, a statement that the transcript has been reviewed. Any deficiencies noted by the respondent or counsel in the verbatim or summarized transcript shall be appended, as an enclosure, to the Board's report.

(2) In addition to the hearing transcript the Board report shall include:

(a) The individual officer's service and background.

(b) Each of the specific reasons from enclosure (3) for which the officer is required to show cause for retention.

(c) Each of the acts, omissions, or traits alleged and the findings on each of the reasons for separation specified.

(d) The position taken by the respondent with respect to the allegations, reports, or other circumstances in question and the acts, omissions, or traits alleged.

17 MAR 1993

(e) The recommendations of the Board that the respondent be separated and receive a specific characterization of service, or, if retirement eligible that the officer be retired in the grade currently held or in the next lower grade per subparagraph 2k(5), or

(f) The finding of the Board that separation for cause is not warranted and that the case is closed.

(g) A copy of all documents and correspondence relating to the convening of the Board, e.g.; witness request.

(3) The report of a Board of Inquiry shall be signed by all members.

(4) Nonconcurring member(s) shall sign the report and submit a separate minority report(s) which will include the extent of nonconcurrence with respect to each finding and recommendation and the reasons therefore.

(5) The respondent shall be provided a copy of the report of proceedings and the findings and recommendations of the Board and shall be provided an opportunity to submit written comments for consideration by the Board of Review.

m. Action on the Report of Board of Inquiry. The report of the Board of Inquiry shall be submitted via the convening authority to CHNAVPERS or DC/S (M&RA) as appropriate for termination of proceedings or delivery to the Board of Review, as determined by the Board of Inquiry. In case of Reserve, temporary limited duty and warrant officers, the report of the Board of Inquiry shall be submitted via the convening authority to CHNAVPERS or DC/S (M&RA), as appropriate, for termination of proceedings or review and endorsement prior to forwarding to the Secretary for final determination (see paragraph 7 of enclosure (4), which might be applicable). This submission shall include any minority report and rebuttal or statement of the respondent. The report of a Board of Inquiry convened solely to determine the grade in which a retirement eligible officer should be retired shall be forwarded directly to CHNAVPERS or DC/S (M&RA) for a forwarding endorsement to the Secretary, who will make the final determination of the grade in which an officer shall be retired. If a retirement eligible officer who has not submitted a voluntary retirement request has failed to show cause for retention, the Board of Inquiry shall make a determination of retirement grade as set forth in subparagraph 2k(5) and the Board of Inquiry report shall be forwarded to a Board of Review.

17 MAR 1993

3. BOARD OF REVIEW

a. Purpose. The purpose of a Board of Review is to review the reports of Boards of Inquiry which recommend separation for cause of regular commissioned officers, other than temporary LDO's and CWO's, and make recommendations to the Secretary.

b. Convening Authority. Boards of Review shall be convened by CHNAVPERS or DC/S (M&RA), as appropriate.

c. Membership, Recorder, Legal Advisor. Boards of Review shall consist of not less than three officers in the same Armed Force as the respondent.

(1) Members shall be highly qualified and experienced officers in the grade of O-6 or above and senior in grade to the respondent. They shall be officers on the active duty list.

(2) At least one member shall be an unrestricted line officer. Such officer will have command experience, whenever possible. One member shall be in the same competitive category as the respondent. However, if the respondent's competitive category does not contain officers in the paygrade of O-6 or above, an O-6 from a closely related designator shall be used to satisfy this membership requirement. If there is not a designator closely related to that of the respondent, then an unrestricted line officer shall be used. CHNAVPERS or DC/S (M&RA) may waive each of these requirements on a case-by-case basis when compliance would result in undue delay. The purpose of these representation requirements is not to serve the interest of any specific group, but to increase the knowledge and experience of the board as a whole.

(3) When sufficient highly qualified and experienced officers on the active duty list are not available, the convening authority shall complete Board membership with available retired officers who meet the criteria of paragraph 3c(1) and (2) above other than active duty list requirements, and who have been retired for fewer than 2 years.

(4) Officers with personal knowledge pertaining to the particular case shall not be appointed to the board considering the case. No officer may be a member of more than one board convened under this instruction to consider the same officer.

(5) The convening authority shall appoint a nonvoting Recorder to perform such duties as appropriate. The recorder

17 MAR 1993

shall not participate in closed sessions of the Board.

(6) The convening authority may appoint a nonvoting Legal Advisor to perform such duties as the Board desires. The legal advisor shall not participate in closed sessions of the Board.

d. Respondent Rights. The respondent does not have the right to appear before a Board of Review or present any statement to the board, except the statement of rebuttal to the findings and recommendations of the Board of Inquiry.

e. Review and Report. The Board of Review shall review the record, the findings and recommendations of the Board of Inquiry, and any minority reports or rebuttal submitted thereto.

(1) If the Board of Review, by majority opinion, finds that the respondent has failed to establish that he or she should be retained on active duty, the Board shall forward a report via CHNAVPERS or DC/S (M&RA), as appropriate, to the Secretary, recommending that the respondent be separated. The board may make a recommendation on the characterization of service, consistent with the guidelines in enclosure (5), not less favorable than that recommended by the Board of Inquiry.

(2) If the Board of Review determines, by majority or tie vote, that the respondent should be retained on active duty, then the case is closed.

(3) The board shall recommend separation for misconduct by reason of unlawful drug involvement if it finds that a preponderance of the evidence supports that finding under subparagraph 1b(2) of enclosure (3).

(4) The board shall recommend separation for misconduct by reason of homosexual conduct if it finds that one or more of the circumstances requiring separation under subparagraph 1b(3) of enclosure (3) is supported by a preponderance of the evidence.

(5) The report of the Board of Review shall be signed by all members. Any nonconcurring members shall sign the report and submit separate minority report(s) which will include the extent of nonconcurrence with the report as to each finding and recommendation and the reasons therefore.

f. Action on the Report of the Board of Review

(1) The report of a Board of Review which recommends

17 MAR 1993

separation shall be delivered to the Secretary, with any desired recommendations of the CHNAVPERS or DC/S (M&RA), for final determination.

(2) If the Board of Review closes the case, all proceedings will be terminated.

(3) If the Board of Review recommends separation, the Secretary of the Navy may:

(a) Direct retention, or

(b) Direct separation of the respondent for the specified reasons, and

(c) Direct a characterization of service not less favorable than that recommended by the Board of Inquiry.